

9-1-1976

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### Recommended Citation

Dallin H. Oaks and Joseph I. Bentley, *Joseph Smith and Legal Process: In the Wake of the Steamboat Nauvoo*, 1976 BYU L. Rev. 735 (1976)

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## Joseph Smith And Legal Process: In the Wake of The Steamboat *Nauvoo*†

*Dallin H. Oaks\* and Joseph I. Bentley\*\**

As an intimate diary of social controversies, legal records can be rich sources for the historian. This article illustrates the use of such records to provide significant new insights into the financial activities of Joseph Smith and the Church of Jesus Christ of Latter-day Saints (Mormon) in Nauvoo, Illinois. It explores a series of legal proceedings that flowed from a routine business transaction in 1840, which at first involved Joseph Smith and the Church only indirectly, but ultimately led to consequences of great magnitude to both.

The original source materials, all discovered by the authors and discussed here for the first time, include records of the Illinois state courts found in the courthouse in Carthage, Hancock County and records of the United States district and circuit courts in Illinois obtained from the Federal Records Center in Chicago. They include the official files in actions for damages brought by Joseph Smith and others in 1840 and 1844, papers from the administration of Smith's intestate estate, the record of an 1842 lawsuit against him on a promissory note, court entries and official correspondence relating to his attempt to obtain discharge in bankruptcy, and the record of a complicated suit in chancery to satisfy one of Smith's debts after his death by the sale of lands that once belonged to him individually or as trustee-in-trust for the Church. This article only illustrates—it does not begin to exhaust—the historical insights available from these records. Here the records are joined by their common relationship to the Mississippi steamboat *Des Moines* (renamed *Nauvoo*).

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† The valuable suggestions of Brigham Young University historians Richard L. Anderson, Leonard J. Arrington, Milton V. Backman, Jr., and Marvin S. Hill, and the research assistance of Lloyd D. Oaks, Brigham Young University undergraduate, Tom Aggen, Brigham Young University law student, and Brent Riggs, J.D., 1969, The University of Chicago, are gratefully acknowledged. Special thanks is also due to Ronald G. Watt of the Church Historical Department, Lillian Woodbury Wood, custodian of the Wilford Wood collection, and Rowena J. Miller of Nauvoo Restoration, Inc., as well as records custodians at the Federal Records Center in Chicago and the Hancock County Courthouse at Carthage, Illinois, for their invaluable cooperation and assistance in our documentary research.

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This is the account of the legal and financial events that followed in her wake.

In the spring of 1837, Lt. Robert E. Lee, a 30-year-old veteran of 8 years in the United States Army Corps of Engineers, was ordered west to save the harbor of St. Louis from impinging snags and sand bars, and to improve navigation to the upper Mississippi by attacking the Des Moines rapids. These rapids were the first major navigational obstacle on the Mississippi River above St. Louis. An 11-mile outcropping of limestone extending from Warsaw on the south to Commerce (later Nauvoo) on the north, the Des Moines rapids forced steamboats to navigate a hazardous and shallow channel along the Iowa shore as narrow as 30 feet in places. Steamers with large tonnage had to reduce their draft by transferring part of their cargo to smaller vessels. Fraught with jagged shoals and treacherous crosscurrents, the rapids were totally impassable during low water.<sup>1</sup>

Bringing from Louisville a little steamboat and several smaller craft, Lee completed the necessary river surveys in 1837 and began blasting rock at the rapids during the time of low waters in the summers of 1838 and 1839. The cabin of the steamboat *Des Moines* served as Lt. Lee's office and sleeping quarters during the busy season. The steamboat was used to tow the smaller craft that were working on the rapids: keelboats for quartering the men, machine boats for raising the stone out of the water, and deck scows for transporting the drills, blasting apparatus, and stone.<sup>2</sup>

By the time higher water and ice forced discontinuance of operations in the fall of 1839, Lee's detachment had made the needed improvements at St. Louis, had thoroughly charted the upper river course, and had widened and deepened the channel in two critical areas of the rapids. The Army engineers removed some 2,000 tons of stone and increased the channel's overall depth by from 9 to 12 inches. Although most of the contemplated work remained to be done, a nationwide depression brought fiscal stringencies, and Congress in the summer of 1840 refused appropriations to continue the work. Greatly disappointed, Lee was compelled to conclude his river operations and accepted a new

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1. 1 D. FREEMAN, R.E. LEE: A BIOGRAPHY 176 (1936) [hereinafter cited as FREEMAN]; J. DARBY, PERSONAL RECOLLECTIONS 227-30 (1880); D.L. Enders, The Des Moines Rapids: A History of its Adverse Effects on Mississippi River Traffic and its Use as a Source of Water Power to 1860, at 16, 31, 36-38, 69-70, April 3, 1973 (unpublished thesis in Brigham Young University Library) [hereinafter cited as Enders].

2. 1 FREEMAN chs. IX, XI; Enders 45-55.

assignment in the East.<sup>3</sup>

Acting as agent for the United States, Robert E. Lee disposed of his equipment at a public auction held in Quincy, Illinois, on September 10, 1840. Among the properties sold were 110 kegs of blasting powder, two keelboats, eight large deck stows, and the steamboat *Des Moines*. The steamboat and keelboats were purchased by several Mormons.<sup>4</sup> Lee's brilliant work, especially on the critical St. Louis harbor, had established his professional standing in the Corps of Engineers 20 years before his career culminated as Commanding General of the Confederate forces during the Civil War.<sup>5</sup>

During the winter of 1838-39, the last year of Lee's river operations, the Mormons were forced to flee *en masse* from Missouri to Illinois. The first contingent of Mormons entered the state at Quincy, but the main group continued north along the Mississippi about 45 miles to settle at Commerce, later renamed Nauvoo. This village was located at the head of the Des Moines rapids, a natural terminus for river navigation on the upper Mississippi.<sup>6</sup>

By the summer of 1840, the founding of Nauvoo was secure; Mormons were gathering in sufficient numbers to make Nauvoo one of the largest cities in Illinois and a significant factor in river commerce on the Mississippi. On August 31, 1840, the First Presidency of the Church issued a letter to all Church members advising them that the time had come "for the upbuilding of the Kingdom" and for erecting a temple in Nauvoo. Those interested in assisting in this great work were formally invited to "come to this place."<sup>7</sup>

The anticipated influx of new population for Nauvoo and the surrounding area created important commercial opportunities for river traffic. Thus, it is not surprising that prominent Mormon entrepreneurs were interested in acquiring the steamboat and keelboats that Robert E. Lee put on sale in Quincy the following month.

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3. 1 FREEMAN 178-79; Enders 55-56.

4. See generally 1 FREEMAN 180; Quincy Whig, Sept. 5, 1840, at 3, col. 3 (contains auction advertisement). On October 6, 1840, Captain Lee made a report on this sale in a letter to the Chief Engineer in Washington, D.C. S. EXEC. DOC. No. 1, 26th Cong., 2d Sess. 134-35 (1840-41).

5. Promoted to captain, he was next assigned to command the harbor defenses at Ft. Hamilton, near Brooklyn, New York, where he remained until he commenced his rise to military fame during the Mexican campaign of General Winfield Scott. 1 FREEMAN 182, 186, 201-02.

6. See 4 J. SMITH, HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS 268 (2d ed. 1950) [hereinafter cited as HISTORY OF THE CHURCH]. For an excellent discussion of the founding of Nauvoo see R. FLANDERS, NAUVOO: KINGDOM ON THE MISSISSIPPI 40 *et seq.* (1965) [hereinafter cited as FLANDERS].

7. 4 HISTORY OF THE CHURCH 185-87; FLANDERS 47-48.

The terms of sale were advertised as "8 months credit, the purchasers giving notes with 2 approved endorsers."<sup>8</sup> The successful bidder for the steamboat and keelboats was Peter Haws, a prominent Mormon businessman who was later to have a leading role in construction of the Nauvoo House, a hotel for travelers on the Mississippi.<sup>9</sup> Haws paid with a \$4,866.38 promissory note payable to Robert E. Lee, Agent for the United States, or order, at the Bank of the State of Missouri in St. Louis, 8 months after its date of September 10, 1840.<sup>10</sup> The note was signed by Peter Haws, Henry W. Miller, George Miller, Joseph Smith, and Hyrum Smith, in that order. Henry and George Miller were Mormon businessmen and Church officials.<sup>11</sup> Haws, Henry Miller, and George Miller signed the note in Quincy on the date of the auction, but Joseph and Hyrum Smith, who apparently did not attend the auction, signed in Nauvoo.<sup>12</sup>

Although it is not clear from the face of the note, it appears from subsequent documents that Peter Haws was the real principal in the steamboat purchase, and that the Millers and Smiths

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8. Quincy Whig, Sept. 5, 1840, at 3, col. 3.

9. DOCTRINE AND COVENANTS OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS § 124:60-62 (1967) [hereinafter cited as D & C]; 4 HISTORY OF THE CHURCH 279, 301-03, 311; 5 HISTORY OF THE CHURCH 369; FLANDERS 183.

10. The originals of this promissory note and 27 other documents comprise an 87-page collection of letters and reports written during the years 1841 to 1852 by or between the United States Treasury Department and various federal marshals, United States attorneys, and cabinet members concerning related events subsequent to this sale. These original source documents are located at the National Archives in Washington, D.C., as part of the records of the Solicitor of the Treasury, Record Group 206, Part I (1841-1852) [hereinafter cited as Treasury Papers]. Appreciation is expressed to Dr. Stanley B. Kimball of Southern Illinois University, who located these documents and noted their existence in his valuable SOURCES OF MORMON HISTORY IN ILLINOIS, 1839-48, at 76-77 (2d ed. 1966).

11. Henry W. Miller was president of the stake at Freedom, Adams County, Illinois. 4 HISTORY OF THE CHURCH 311. In April 1841, he was called to help raise funds for building the Nauvoo Temple. *Id.* at 342. George lived on the Iowa side of the river just across from Nauvoo, where he had a farm and woodyard to supply river steamers. Letter of George Miller, June 26, 1855, in 10 J. HISTORY OF THE REORGANIZED CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS 27 (1917), also printed in Mills, *De Tal Palo Tal Astilla*, 10 HIST. SOC'Y OF S. CAL., pt. III, 86, 117-18 (1917). Both George and Henry were leaders with Peter Haws and others in the financing and construction of the Nauvoo House. 4 HISTORY OF THE CHURCH 311. George Miller apparently acted quite frequently as surety or guarantor for Church officers in other business transactions. See 5 HISTORY OF THE CHURCH 266. On January 24, 1841, he was called to the office of Bishop in the Church in place of Edward Partridge, deceased. 4 HISTORY OF THE CHURCH 286; D & C § 124: 20-21.

12. See promissory note, in Treasury Papers. A possible reason for Joseph and Hyrum remaining in Nauvoo is the fact that their father, Joseph Smith, Sr., died of consumption on September 14, 1840, and probably would have been near death on September 10. 4 HISTORY OF THE CHURCH 189.

were only sureties for his obligation.<sup>13</sup> But since the terms of sale required "two approved endorsers," the sureties' role was essential. The original papers in the transaction show the thoroughness and care Robert E. Lee exerted in obtaining letters from prominent public figures authenticating the good character and financial integrity of the sureties.<sup>14</sup> In addition to the promissory note signed by Haws, the Millers, and the Smiths, Lt. Lee received an endorsed note, also in the amount of \$4,866.38, payable to Haws, George Miller, and the two Smiths, signed by Charles B. Street and Marvin B. Street as obligors and by Robert F. Smith as surety. This note, which the purchasers gave as additional security, apparently represented a transaction in which the Streets acquired a part interest in the steamboat themselves. Before evacuating his headquarters at St. Louis, Robert E. Lee endorsed the Mormons' promissory note and deposited it, along with the Streets' note, at the Bank of Missouri for collection when due the next spring.<sup>15</sup>

As soon as it was acquired, the steamboat (renamed the *Nauvoo*) was remodeled and entered in the upper Mississippi River trade.<sup>16</sup> This included hauling lead from the mines upriver

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13. See sources cited notes 14, 33 *infra*. Register of Miscellaneous Suits in which the United States is a Party or Interested, 1834-1848 [hereinafter cited as Register of Miscellaneous Suits], in Treasury Papers specifically identifies Peter Haws as the "Principal" and lists the other four comakers as "sureties" in the transaction with Robert E. Lee. Even though only sureties, these parties had an obvious interest in promoting Mississippi river traffic. George Miller was already involved with river traffic on the Iowa side; the Smiths had been charged by the Church High Council with the responsibility to "superintend the affairs of the ferry between Nauvoo and Montrose [Iowa]." 4 HISTORY OF THE CHURCH 95. Joseph Smith later acquired a part interest in the *Maid of Iowa*, a steamboat that was utilized as a ferry in 1843-44. 5 HISTORY OF THE CHURCH 386, 417-18. See note 189 *infra*.

14. In a September 10, 1840, letter to Captain Lee, U.S. Senator Richard M. Young and D.G. Whitney, a Quincy merchant, stated that the Smiths and Millers were all "good and sufficient for said amount [of the note] and that the Government [was] safe in accepting the same." In a separate letter to Lee on the same date, concerning only the Millers (and concurred in by Illinois Governor Thomas Carlin as to Henry Miller only), Senator Young stated that they had been "tendered as securities by the purchaser of the Steam Boat Des Moines" and other property sold by Lee, that Young had known both Millers "for many years," that they were "considered men in very good circumstances and of . . . industrious habits," that both were "proprietors of some valuable lands and other property . . . good for several thousand dollars," and that they were "men who would not promise what they are not able to perform." Treasury Papers.

15. See Letter from Robert E. Lee to Charles B. Penrose, Solicitor of the Treasury, June 7, 1841, in Treasury Papers. The undated Inventory of Property cited in note 76 *infra* states that the "note drawn by C. B. and M. B. Street" had been delivered and signed over to the Bank of Missouri at St. Louis "as Collateral Security for Payment" of the note to the United States in "the Same sum."

16. Letter of George Miller, *supra* note 11; FLANDERS 160-61. The Nauvoo Collection of the Church Archives has the "ledger" of the Steamboat *Nauvoo*, which records the initial debt to the United States and sets out shipping charges from mid-September to

in Galena to the market in St. Louis.<sup>17</sup> According to George Miller, Joseph Smith took two trips on the steamer "to keep out of the way of the officers of the law" who were then seeking his arrest to face old charges in Missouri.<sup>18</sup> But before the close of navigation that fall, misfortune struck the steamer when it was wrecked by running upon the rocks and sandbanks outside the usual steamboat channel.

On August 10, 1840, 1 month before the Army sale in Quincy, Peter Haws, George Miller, Joseph Smith, and Hyrum Smith had engaged the services of two steamboat pilots, brothers named Benjamin and William Holladay, who were represented to be "skillful and competent pilots with understanding [of] the steamboat channel of the upper Mississippi River."<sup>19</sup> Immediately after the steamer's wreck, Haws, George Miller, and the Smiths engaged counsel and brought a civil action against the Holladay brothers, alleging that they had wrecked the steamboat either carelessly or with intent to destroy it, inflicting \$2,000 damage to the vessel and causing plaintiffs to lose \$1,000 in profits from operations.<sup>20</sup> The sheriff arrested the Holladay brothers on civil process on November 30, 1840, but they were soon released on bond and apparently fled the state.<sup>21</sup>

The steamboat mishap dashed its operators' hopes of meeting their obligations to the United States on the note falling due on May 10, 1841, and the various parties in interest fell into controversy over who should bear the loss. On February 7, 1844, Peter Haws, George Miller, and Joseph and Hyrum Smith brought an action against Charles B. Street, Marvin B. Street, and Robert F. Smith for the \$4,000 unpaid balance on their note.<sup>22</sup> It appears from the papers filed in this lawsuit that Haws and his

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mid-December, 1840, but has no information on the proprietors of the business. As for the keelboats, it appears that they ultimately might have been used to transport lumber from the pineries of Wisconsin and the upper Mississippi for building the Nauvoo House, the Temple, and other structures in Nauvoo, a project to which George Miller personally devoted a great deal of time. See generally 5 HISTORY OF THE CHURCH 57-58, 386.

17. Source cited note 22 *infra*.

18. Letter of George Miller, *supra* note 11.

19. Complaint in Smith v. Holladay, Hancock County Cir. Ct., May Term, 1841, Courthouse, Carthage, Ill.

20. The complaint for "trespass on the case" fails to state the precise scene or date of the mishap. *Id.*

21. The outcome of the civil action, which was formally filed with the circuit court on April 23, 1841, is not known with certainty, but it was probably abandoned and dismissed for want of prosecution because of inability to recover damages from the absent defendants. See Bond Notice, *re* Smith v. Holladay, *supra* note 19.

22. Summons, pleas, and demurrers in original case file in Smith v. Street, Hancock County Cir. Ct., May Term, 1844, Courthouse, Carthage, Ill.

associates had sold the Streets a five-sixth interest in the steamboat and two keelboats, plus two promissory notes from third parties totalling about \$800, taking the Streets' note in part or full payment. As a result of the damage to the steamboat, the Streets refused to pay their obligation. In defense, the Streets cited a multitude of grievances against the Mormon plaintiffs: the third-party notes received from the plaintiffs were uncollectible; the plaintiffs had failed to deliver one keelboat; and the steamboat had been delivered in a damaged condition, without tackling, anchors, or chimney. In addition, the steamboat had been so slow in delivering a cargo of 180 tons of lead from Galena to St. Louis (probably due to the wreck) that the shipper had suffered serious loss. As a result, the steamboat was encumbered with a lien and gained an unfavorable reputation that interfered with obtaining other cargos. Other encumbrances were alleged, including the expense of raising the steamer's chimney from the Mississippi (probably sunk at the wreck), the cost of new chimneys, and various losses of trade, all totaling well over \$4,000, which the Streets sought to setoff against their obligation on the note. After a prolonged series of pleas and demurrers, with various rulings by the court, the Mormons' action was finally dismissed on May 26, 1846.<sup>23</sup>

The period 1840-41 was not an easy time for Mormon businessmen to sustain a large cash loss on such a business enterprise. The Panic of 1837 followed a period of wild speculation, particularly along the western frontier, and resulted in several years of severe depression throughout the United States.<sup>24</sup> Commenting on what he called "a serious financial and industrial crisis," Daniel Webster declared that it seemed "inconceivable that conditions can ever right themselves enough to have prosperous times in this country again. Trade and industry throughout the land are disorganized. Banks by the hundreds have failed."<sup>25</sup> This crisis led to the passage of the Bankruptcy Act of 1841, discussed below. Flanders describes the general economic conditions in Illinois during the early 1840's as "near a state of collapse."

The whole country had remained depressed following 1839; and in Illinois the chronic fiscal crisis stemming from the enormous state debt incurred by the plan of works had further hindered

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23. *Id.* Circuit Court Record, Hancock County, Book "D" at 131, 136, 158, 171, 223-24, 226, 242, 318, 325, 438, and 443 (costs assessed against the plaintiffs) Courthouse, Carthage, Ill.

24. See C. WARREN, *BANKRUPTCY IN UNITED STATES HISTORY* 52-56, 175 n.14 (1935).

25. *Id.* at 55-56.



recovery. Public and private credit had long been strained, and early in 1842 the Bank of Illinois at Shawneetown and the Illinois State Bank at Springfield failed. With the collapse of the two largest banks financial ruin spread throughout the state. What commerce there was was on a near barter basis.<sup>26</sup>

The Mormon people were in more desperate straits than the rest of the country generally. As many as 15,000 of them had been driven from their homes in Missouri during the winter of 1838-39 and had lost property in an amount estimated at between 1 and 2 million dollars.<sup>27</sup> Pressed by these losses and by even earlier ones originating in Ohio, a general conference of the Church held on October 4, 1841 resolved that Church assets should not be appropriated to settle old claims that might be brought forward from Ohio and Missouri.<sup>28</sup>

The due date on the note given for the purchase of the steamboat passed without payment.<sup>29</sup> Notified by the Missouri Bank of the default, Captain Robert E. Lee wrote to his superiors from his new post of duty in New York, suggesting that the Solicitor of the Treasury be requested to order suit on the note.<sup>30</sup> The Solicitor promptly requested that Montgomery Blair, then U.S. Attorney in St. Louis, institute legal proceedings and arrest the obligors if they entered Missouri.<sup>31</sup> When months passed without success

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26. FLANDERS 167. As late as March 4, 1843, the Nauvoo City Council passed an ordinance making gold and silver the only legal tender in that city, outlawing the use of banknotes or paper currency, and prescribing "a fine of one dollar for every dollar" of paper thus used. 5 HISTORY OF THE CHURCH 297.

27. See Mormon petition to Congress in 1839 requesting redress of wrongs committed against members of the Church while in Missouri. 4 HISTORY OF THE CHURCH 24-38.

28. *Id.* at 427.

29. It appears that another note in the sum of \$482.49, given to Robert E. Lee on September 10, 1840, for the purchase of other river equipment by Quincy merchants D.G. Whitney, J.O. Woodruff, and Samuel Holmes, also fell into default on the same date as the Mormons' note and was not collected until legal proceedings were instituted at the Treasury Department's request by Justin Butterfield, U.S. Attorney for Illinois. See Letter from Robert E. Lee to Charles B. Penrose, Solicitor of the Treasury, June 7, 1841, in Treasury Papers; Register of Miscellaneous Suits, *supra* note 13.

30. See Letter from Robert E. Lee to Charles B. Penrose, Solicitor of the Treasury, June 7, 1841, in Treasury Papers; Letter from Col. Joseph G. Totten, Chief Engineer, to John Bell, Secretary of the War, May 27, 1841, in Treasury Papers. Bell was later a Unionist candidate for President in the 1860 election, finishing third to Abraham Lincoln. S. MORISON, THE OXFORD HISTORY OF THE AMERICAN PEOPLE 604 (1965 ed.).

31. Letter from Charles B. Penrose, Solicitor of the Treasury, to Montgomery Blair, U.S. Attorney for Missouri, June 1, 1841, in Treasury Papers. In 1861, Blair was chosen as Postmaster General in Abraham Lincoln's first cabinet. MORISON, *supra* note 30, at 618. Arrest on civil process was a common means of beginning a civil action during this period of time. See Oaks, *Habeas Corpus in the States—1776-1865*, 32 U. CHI. L. REV. 243, 264-66 (1965).

under this plan, Blair passed the responsibility for collection to Justin Butterfield, U.S. Attorney for the District of Illinois.<sup>32</sup> Butterfield filed a complaint in the United States District Court for the District of Illinois on April 3, 1842.<sup>33</sup> On May 4, 1842, a summons was served on defendants Henry Miller, George Miller, Joseph Smith, and Hyrum Smith; Peter Haws was not found. It directed them to appear in court in Springfield on the first Monday of June 1842. Thereafter, the case was called in Springfield on three separate days, but none of the defendants appeared. Consequently, on June 11, 1842, Judge Nathaniel Pope entered a default judgment against the defendants for the \$4,866.38 amount of the note, plus "damages" (probably interest) of \$317.93 and court costs of \$28.18<sup>34</sup>, making a total of \$5,212.49<sup>34</sup>.<sup>34</sup> Under well-recognized principles of law, this judgment became a lien on all real estate then owned by Joseph Smith and the other obligors.<sup>35</sup>

Pursuant to the routine practice for the collection of judgments, writs of execution were issued to the United States

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32. See Letter from Charles B. Penrose, Solicitor of Treasury, to John Bell, Secretary of War, June 1, 1841, in Treasury Papers. In his June 7, 1841 letter to the Treasury Solicitor, Robert E. Lee had suggested that the collection matter be delivered directly to Butterfield with the \$482.49 note drawn by the Quincy merchants. Treasury Papers. Butterfield was regarded as "one of the most learned, talented and distinguished members of the [Illinois] bar . . . ." U. LINDER, REMINISCENCES OF THE EARLY BENCH AND BAR OF ILLINOIS 87 (2d ed. 1879). See also Arnold, *Recollections of Early Chicago and the Illinois Bar*, in Chicago Bar Association Lectures, Fergus Historical Series, No. 22, at 13 (Chicago, 1880).

33. Complaint, United States v. Miller, indexed as the next to the last entry in 1 Complete Record of the United States District Court for the District of Illinois, No. 1600, at 529-31 (1819-1827), Federal Records Center, Chicago. The full title of this 1843 case is *The United States of America vs. Henry W. Miller, George Miller, Joseph Smith and Hyrum Smith, Impleaded with Peter Hawes* [sic]. This is the only case that is not within the 1819 to 1827 time period covered by that volume.

34. Letter from Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, Oct. 13, 1842, in Treasury Papers; Report of U.S. Marshal to Solicitor of the Treasury, Jan. 24, 1843, in Treasury Papers. There is no evidence that Joseph Smith had any advance notice of any of these proceedings until he was personally served on May 4, 1842. A possible reason for his failure to appear at the Springfield hearings in June is the fact that on May 6, 2 days after Smith was served, Lilburn W. Boggs (Governor of Missouri during the Mormons' expulsion from that state) was shot by an unknown assailant in Independence, Missouri. 5 HISTORY OF THE CHURCH 234. The Mormons were blamed for this incident, and Joseph Smith had to take precautions against being kidnapped or officially extradited to Missouri to face charges of alleged complicity in the matter. See 5 HISTORY OF THE CHURCH 86-169, 234-37; J. STEWART, JOSEPH SMITH: THE MORMON PROPHET 172-75 (1966).

35. Law of Mar. 3, 1845, ch. 57, § 1, [1845] Rev. Stat. Ill. 300-01; Law of Jan. 17, 1825, § 1, [1833] Rev. Laws Ill. 370-71; Jones v. Guthrie, 23 Ill. 367 (1860); Reynolds v. Henderson, 7 Ill. (2 Gilm.) 111, 118 (1845); Rogers v. Dickey, 6 Ill. (1 Gilm.) 637, 644-45 (1844).

Marshal, in July 1842 and again in 1843, commanding him to levy on all "goods, chattels, lands, tenements and real estate of the defendants." In each instance the Marshall returned the writs after a few months with this endorsement: "No property found of the defendants subject to said execution."<sup>36</sup> The collection efforts of the United States Government did not include any suit on the \$4,866.38 note payable from the Streets to Haws, George Miller, and the Smiths that had been assigned to the Government as collateral security for the Mormons' obligation.

In addition to the general economic depression, the damage to the steamboat, and the nonpayment of the Streets' note, there are other possible reasons for the Mormons' default. First, by 1841 it appeared that the United States Government was not willing to appropriate any sums to redress the loss of land and other injuries suffered by the Mormons in Missouri, even though much of the land the Mormons lost was originally acquired from the United States for cash.<sup>37</sup> It was no secret that the Church officials had expected a substantial cash settlement from Congress to help defray current obligations.<sup>38</sup> Thus, it is not surprising that they did not find it in their hearts or their pocketbooks to pay a monetary obligation to the federal government.

Second, Joseph Smith and the other cosigners of the note as sureties may have been only secondarily liable. If they simply guaranteed Peter Haws's debt, they would have become legally responsible for its payment only if Haws failed to meet his obligation. Thus, Joseph Smith and the other guarantors may have had some valid legal defenses because of the Government's failure to establish that the note could not be collected from Haws, who was not even served in the lawsuit. In most cases, men are naturally more reluctant to make good on suretyship obligations than on primary obligations from which they have received direct consideration. Nevertheless, when Joseph Smith prepared a list

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36. 4 Complete Record of the United States Circuit Court for the District of Illinois, No. 1603, at 488-89 (June 18, 1841 through July 17, 1852) [hereinafter cited as Chancery Records]. This volume is located at the Federal Records Center in Chicago; a copy of this case is filed in the Brigham Young University Archives as Manuscript No. A74-22. See Report of U.S. Marshal to Solicitor of the Treasury, Jan. 24, 1843, in Treasury Papers.

37. FLANDERS 128-29; see Letters from Horace R. Hotchkiss to Sidney Rigdon and Joseph Smith, Mar. 7, 1840, and to Joseph Smith, Apr. 1, 1840, in 4 HISTORY OF THE CHURCH 98, 100-02.

38. See allegations contained in Memorial of inhabitants of Nauvoo in Illinois praying redress for Missouri injuries and also Memorial of the constituted authorities of the City of Nauvoo in Illinois praying to be allowed a territorial form of government, both dated April 5, 1844, in Records of the U.S. Senate, Record Group 46, in Treasury Papers.

of his debts totalling \$73,066.38 during the spring of 1842, he included the following entry at the top of the list of nine creditors:<sup>39</sup> "To the United States of America, September 10, 1840—\$4,866.38."

Before discussing the next step in the federal efforts to collect the steamboat obligation, it will be useful to review some familiar history concerning the finances of Joseph Smith and the Church of Jesus Christ of Latter-day Saints, with special emphasis on the trustee-in-trust relationship that was to prove pivotal in the events to come.

During the first 2 years of the Mormon settlement in Nauvoo, the financial activities of the Church and the personal financial affairs of Joseph Smith were indistinguishable. For example, in the key "Hotchkiss Purchase" in August 1839, Joseph Smith, Hyrum Smith, and Sidney Rigdon agreed to purchase a 500-acre tract of land near the main steamboat landing in the city of Nauvoo on a land contract for \$53,500 plus interest, giving their personal 10- and 20-year notes in payment.<sup>40</sup> Whether these men, who then comprised the First Presidency of the Church, were acting individually or in behalf of the Church may have been difficult to say at that point. But they were clearly acting to provide land on which members of the Church could settle, and they were pledging their personal credit to do so.<sup>41</sup>

Efforts to distinguish the Church's property from the personal property of Joseph Smith began in the winter of 1840-41, which was a time of great activity and clarification in the formal organization of civic, business, and Church activities in Nauvoo.<sup>42</sup>

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39. "Schedule setting forth a list of petitioners, creditors, their residence and the amounts due each," cited in F. BRODIE, *NO MAN KNOWS MY HISTORY* 266 (2d ed. rev. enlarged 1971) as located in the library of the Reorganized Church of Jesus Christ of Latter Day Saints. That library is currently unable to locate this document. Letter from W. Grant McMurray to Dalin H. Oaks, Mar. 19, 1976. For a copy of the complete schedule see note 76 *infra*.

40. 4 *HISTORY OF THE CHURCH* 408, 435; *FLANDERS* 41-42. These same three obligors also cosigned notes or bonds for even earlier purchases of property from Hugh White (135 acres) and Isaac Galland (47 acres) on April 30, 1839. D.E. MILLER & D.S. MILLER, *NAUVOO: THE CITY OF JOSEPH* 27-29 (1974).

41. See 4 *HISTORY OF THE CHURCH* 17, 435-36.

42. The Act to incorporate the City of Nauvoo, the Nauvoo Legion, and the University of the City of Nauvoo passed the Illinois Legislature and was signed by the Governor on December 18, 1840. 4 *HISTORY OF THE CHURCH* 239-45. It was implemented by formal actions of the elected officials of the City of Nauvoo early in February. 4 *HISTORY OF THE CHURCH* 288-96. On February 23, 1841, the Illinois Legislature passed an act incorporating "The Nauvoo House Association," and 4 days later passed another act incorporating "The Nauvoo Agricultural and Manufacturing Association." 4 *HISTORY OF THE CHURCH* 301-05. See also 4 *HISTORY OF THE CHURCH* 274-86 and D & C § 124 for the revelation instructing Joseph Smith to build the Nauvoo House for a resting place for travelers in Nauvoo.

A special conference of the Church held at Nauvoo on January 30, 1841, took a step of great importance to the Church and its properties by electing Joseph Smith "sole Trustee-in-Trust for the Church of Jesus Christ of Latter-day Saints."<sup>43</sup> This action was confirmed on February 8, 1841, in the manner provided by Illinois law when Joseph and others filed a sworn statement with the County Recorder of Hancock County<sup>44</sup> certifying that Joseph was elected sole trustee and vested with

plenary powers, as sole Trustee in Trust for the Church of Jesus Christ of Latter-day Saints, to receive, acquire, manage, or convey property, real, personal, or mixed, for the sole use and benefit of said Church . . . .<sup>45</sup>

By their sworn statement, the Church authorities were acting "agreeably to the provisions of an act entitled, 'An Act Concerning Religious Societies,' approved February 6, 1835,"<sup>46</sup> which authorized a religious society to elect or appoint "any number of trustees, not exceeding ten," in whom title to land and improvements owned by the society would be vested.<sup>47</sup>

During the winter of 1840-41, Brigham Young and other members of the Council of the Twelve were in England and other areas directing missionary work. By the summer of 1841, they had returned to Nauvoo and received important new responsibilities. At a special conference of the Church held in Nauvoo on August 16, 1841, Joseph Smith recommended, and the conference resolved, that "the time had come when the Twelve should be called upon to stand in their place next to the First Presidency, and attend to the settling of emigrants [sic] and the business of

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43. 4 HISTORY OF THE CHURCH 286.

44. This certificate was recorded February 8, 1841, as Instrument No. 87 in "Bonds and Mortgages" Book 1, Hancock County Records, Carthage, Ill., at 95. 4 HISTORY OF THE CHURCH 287-88. The original copy of the certificate is in the Church Archives.

45. 4 HISTORY OF THE CHURCH 287.

46. *Id.*

47. Law of Mar. 1, 1835, [1834] Laws of Ill. 147 (approved Feb. 6, 1835). It also required the society to certify to the election of the trustees and to record such certificate with the recorder of the county in which the society or congregation was formed. The remaining provisions of the legislation clarified the right of the trustees and their successors to have perpetual succession and existence, capable of taking all acts necessary as a person in the eyes of the law.

It should be noted that the Church's certification of election of a trustee did not amount to an act of incorporation, such as the Nauvoo authorities had accomplished by charter from the legislature for other entities mentioned in note 42 *supra*, but rather a formalization of a relationship by which a church leader could hold land in trust for the purposes of the religious society or congregation. For a general discussion of the history of various title-holding devices for religious organizations see Kauper & Ellis, *Religious Corporations and the Law*, 71 MICH. L. REV. 1499, 1511, 1541-43 (1973).

the Church at the stakes . . . .”<sup>48</sup> Specifically, the Twelve were to “take measures to assist emigrants [sic] who may arrive at the places of gathering, and prevent impositions being practiced upon them by unprincipled speculators.”<sup>49</sup> This change was for the stated purpose of lightening the work load of President Joseph Smith so that he might give greater attention to his prophetic duties. The Twelve promptly issued an epistle to the Saints in all parts of the world urging them to gather to the vicinity of Nauvoo, where towns and cities would be designated for their settlement.<sup>50</sup>

The added property-management responsibilities of the Council of the Twelve provided an occasion to implement and accelerate the separation of Joseph’s official and personal capacities.<sup>51</sup> The Twelve met on August 31, 1841 “to attend to the business of the Church, assist the Trustee in Trust in his arduous duties, [and] attend to the settling of immigrants . . . .”<sup>52</sup> The Twelve took notice of the fact that, because of the peculiar situation of the Church up to that point, it had been necessary for the properties of the Church to be “taken and holden by committees of the Church, and private individuals . . . .”<sup>53</sup> Now that the Church had a regularly appointed trustee-in-trust, however, it was

voted unanimously, that we advise the trustee-in-trust to gather up all deeds, bonds, and properties belonging to the Church, and which are now held either by committees or individuals, and take the same in his own name as trustee-in-trust for the Church of Jesus Christ of Latter-day Saints, as soon as such arrangements can be made consistently with his various and multiplied cares and business; and that we individually and collectively will use all diligence to render him every assistance possible to accomplish this desirable object.<sup>54</sup>

At the same time, in consideration of the love they felt for Joseph

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48. 4 HISTORY OF THE CHURCH 403.

49. *Id.* at 402.

50. *Id.* at 409-10. As a result of this gathering, the Twelve apparently expected to generate the funds necessary to pay the interest and principal on the Hotchkiss purchase. Joseph Smith’s August 25 and October 9, 1841 letters to the proprietors of Hotchkiss, Tuttle & Co. of New Haven, Connecticut, indicated that efforts were then underway to persuade Mormons in the East to sell their property, turn the proceeds over to the Church agent, and move to the Nauvoo area, where they would receive properties of equivalent value. Funds received in the East would be used to pay amounts due the Hotchkiss Company. *Id.* at 406-07, 430-33; FLANDERS 130.

51. See generally FLANDERS 123-24.

52. 4 HISTORY OF THE CHURCH 412.

53. *Id.* at 413.

54. *Id.*

Smith and his family and the great losses the Smiths had sustained by the persecutions in Missouri and elsewhere, the Twelve voted unanimously

that we for ourselves, and the Church we represent, approve of the proceedings of President Smith, so far as he has gone, in making over certain properties to his wife, children, and friends for their support, and that he continue to deed and make over certain portions of Church property which now exist, or which may be obtained by exchange, as in his wisdom he shall judge expedient, till his own, and his father's household, shall have an inheritance secure to them in our midst, agreeably to the vote of the general conference of the Church held at Commerce in October, 1839.<sup>55</sup>

Within a few months of these events, Joseph Smith began signing legal instruments that distinguished between his personal capacity and his status as trustee-in-trust for the Church. Printed deed forms by which land was conveyed to or from Joseph Smith "as sole trustee in trust for the Church" were in common use in Nauvoo beginning in 1842.<sup>56</sup> In one particularly revealing docu-

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55. *Id.* at 412-13. Responding to rumors that Joseph Smith was "enriching himself on the spoils" of the Church, Brigham Young and the Quorum of the Twelve, on October 12, 1841, wrote an epistle to the Church members setting forth the extent of Joseph Smith's personal possessions:

When Brother Joseph stated to the general conference the amount and situation of the property of the Church, of which he is Trustee-in-Trust by the united voice of the Church, he also stated the amount of his own possessions on earth; and what do you think it was? We will tell you: his old Charley (a horse) given him in Kirtland, two pet deer, two old turkeys and four young ones, the old cow given him by a brother in Missouri, his old Major (a dog), his wife, children and a little household furniture; and this is the amount of the great possessions of that man whom God has called to lead His people in these last days, this is the sum total of the great estates, the splendid mansions and noble living of him who has spent a life of toil and suffering, of privation and hardships, of imprisonments and chains, of dungeons and vexatious lawsuits, and every kind of contumely and contempt ungodly men could heap upon him, and last of all report him as rolling in wealth and luxury which he had plundered from the spoils of those for whose good he had thus toiled and suffered. Who would be willing to suffer what he has suffered, and labor near twenty years, as he has done, for the wealth he is in possession of?

*Id.* at 437-38. In this action of August 31, 1841, the Twelve also resolved that President Smith, as trustee-in-trust, be requested and instructed to extend relief out of Church properties to indigent members of the Church in order that "no one shall be denied the privilege of remaining in our midst and enjoying the necessities of life, who has been faithful in his duties to God and the Church." *Id.* at 413.

56. The Joseph Smith Collection in the Historical Department, Archives of the Church of Jesus Christ of Latter-day Saints in Salt Lake City, Utah [hereinafter cited as Joseph Smith Collection] contains approximately ten such deeds dated 1842 and 1843, as well as three handwritten bonds relating to the sale of Nauvoo real estate by or to

ment, dated January 4, 1842, Joseph Smith, Hyrum Smith, and Sidney Rigdon (the members of the First Presidency who had signed in their individual capacities for the Nauvoo city lots purchased on a contract of sale from Hotchkiss) signed a \$27,300 bond in favor of Joseph Smith as trustee-in-trust for the Church, which bound the three to execute the necessary deeds when proper conveyances were obtained from Hotchkiss.<sup>57</sup> This was clearly an effort to clarify the Hotchkiss purchase as a transaction in which the members of the Presidency had acted in their official capacity. Under this bond, Joseph as trustee was formally promised that he could look to the three for deeds when subsequent buyers of the lots looked to him.

One of the most important deeds executed during this period was a deed from Joseph and Emma Smith (in their individual capacities) to Joseph Smith as trustee-in-trust for the Church. The deed was dated October 5, 1841, the last day of the Church's semiannual general conference, at which numerous Church property transactions were discussed and the responsibility of Joseph Smith to take title to Church property as trustee-in-trust was reemphasized. The deed was delivered and notarized that same day in the presence of two witnesses.<sup>58</sup> It covered 239 Nauvoo city lots (approximately 300 acres), comprising most of the south half of the riverfront section of Nauvoo originally purchased in 1839.<sup>59</sup> In accordance with familiar principles of conveyancing law, this deed was effective on the date of its valid execution and delivery; but in order to give added protection against the possible interests of third parties, it was desirable that it be recorded. This was done at the office of the County Recorder in Carthage on April 18, 1842.<sup>60</sup> This 6-month delay in recording such an important deed was later relied upon as evidence of an intent to defraud, as

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Joseph Smith as trustee-in-trust, dated 1841 and 1842. The Historical Department, Archives of the Church of Jesus Christ of Latter-day Saints in Salt Lake City, Utah is hereafter cited as Church Archives.

57. Box 4, Folder 7, Joseph Smith Collection.

58. The deed is in Box 4, Folder 7, Joseph Smith Collection. The lengthy notarial certificate was verified by Ebenezer Robinson, Justice of the Peace, and by Willard Richards, witness.

59. FLANDERS 170. An examination of the original Nauvoo city plat dated August 30, 1839, recorded in Hancock County Plat Book No. 1, at 38-39, shows that the transfer in question covered most of the southerly or lower part of Nauvoo (Section 2, Township 6 North, Range 9 West of the 4th principal meridian) bounded by Ripley Street to the north, Wells Street to the east, and the Mississippi River bend to the south and west, including all of the Hugh and William White and Galland purchases. Only 31 of the 270 blocks in this area were completely excluded.

60. Notation on deed, *supra* note 56; Hancock County Deed Book "K" at 159-61.



will be discussed below.<sup>61</sup>

While the Mormon leaders were engaged in these rearrangements of property ownership, Congress, on August 19, 1841, passed a bankruptcy act to become effective February 1, 1842.<sup>62</sup> This law, which was a consequence of the economic depression that began with the Panic of 1837, was the first federal bankruptcy law permitting debtors to file voluntary petitions in bankruptcy.<sup>63</sup> The Congressional debates and action on the Bankruptcy Act received their share of attention in the non-Mormon newspapers of western Illinois, which published at least two reasonably accurate summaries.<sup>64</sup> The Mormon press made no mention of the subject until 2 months after the law went into effect.

Despite the newspaper publicity in Warsaw and Quincy, which included warnings that persons interested in discharge should act quickly since there were efforts to repeal the bankruptcy law in Congress,<sup>65</sup> there was no sudden rush to the bankruptcy court. An examination of the notices that the law required to be published in the local press shows that bankruptcy petitions started with a trickle and became numerous only for those law firms that promoted and advertised for the bankruptcy business. The first notices published in western Illinois were for non-Mormons in Quincy, Adams County, where a law firm with an aggressive advertising campaign promoted bankruptcy and captured most of the business.<sup>66</sup> With the exception of a single notice

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61. See text accompanying notes 98-100 *infra*.

62. The Bankruptcy Act of 1841, ch. 9, 5 Stat. 440-49.

63. See C. WARREN, *supra* note 24, at 60. The prior short-lived federal Bankruptcy Act of 1800 permitted only compulsory bankruptcy instituted by creditors. *Id.* at 20.

Known as the "Great Whig Bankruptcy Act," the new law was first proposed by Martin Van Buren in 1837. The voluntary feature was introduced when it was redrafted, primarily by Daniel Webster and Joseph Story. *Id.* at 60, 70.

64. Articles covering the progress and passage of the bankruptcy bill were published in the Quincy Whig, Aug. 14, 1841, at 1, col. 7; Aug. 28, 1841, at 2, col. 6; Sept. 4, 1841, at 3, col. 1; The Warsaw Signal, Sept. 1, 1841, at 3, col. 1; Sept. 8, 1841, at 2, col. 4. Summaries appear in The Warsaw Signal, Sept. 8, 1841, at 2, col. 4, and Oct. 27, 1841, at 3, cols. 1-2.

65. See The Warsaw Signal, Jan. 5, 1842, at 2, col. 1; Feb. 2, 1842, at 2, col. 3. General information concerning procedures for filing in bankruptcy was publicized in The Warsaw Signal, Jan. 5, 1842, at 2, col. 1, and Quincy Whig, Feb. 12, 1842, at 2, col. 3. Applications could be filed with the federal District Court clerk in Springfield after February 1, 1842. Quincy Whig, Feb. 12, 1842, at 2, col. 3. Notice of publication in two newspapers (including one at Springfield) was required at least 20 days before bankruptcy hearings could be held. The Warsaw Signal, Jan. 5, 1842, at 2, col. 1.

66. During January, February, and March of 1842, the Quincy Whig carried a notice in which the Quincy law firm of Lot, Dixon & Gilman advertised their availability to handle cases under the Bankruptcy Act. *E.g.*, Quincy Whig, Feb. 19, 1842, at 3, col. 3. Most of the increasing numbers of published notices of bankruptcy filings for Adams County in 1842 listed this firm as solicitor. See, *e.g.*, Quincy Whig, Feb. 26, 1842, at 3,

published in March, no bankruptcy notices were published in Hancock County newspapers until mid-April.<sup>67</sup> Among the first persons to file for bankruptcy in Hancock County were Mark Aldrich of Warsaw, the unsuccessful land developer of the community of Warren, which had been abandoned by the Mormons, and his associate, Calvin A. Warren, a Quincy lawyer whose law firm became a leader in the bankruptcy business.<sup>68</sup>

The firm of Ralston, Warren & Wheat initiated the bankruptcy remedy among the Mormons with a visit to Nauvoo in April 1842. The initial issue of *The Wasp* (April 16), Nauvoo's first general weekly newspaper, carried a notice that this firm was "prepared to attend to all applications for discharge under the Bankrupt Law" and that a member of the firm would be in Carthage and Nauvoo on or about April 14, for 3 or 4 days, on such business.<sup>69</sup> So far as can be determined from a search of available newspapers, diaries, and minutes of official meetings, this April visit was the Mormons' first introduction to the idea of bankruptcy. In just 3 weeks, *The Wasp* carried its first notices of Mormons filing petitions in bankruptcy. The first group, twelve in number, included Joseph and Hyrum Smith and Sidney Rigdon.<sup>70</sup> Other Mormons filed their notices later that spring or summer, making a total of at least 26 who applied for the benefits of the Bankruptcy Act.<sup>71</sup>

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cols. 1-2; Mar. 5, 1842, at 3, col. 3; Apr. 2, 1842, at 3, col. 2; Apr. 9, 1842, at 3, col. 3; Apr. 16, 1842, at 3, col. 3.

67. See *The Warsaw Signal*, Mar. 9, 1842, at 3, col. 6; Apr. 12, 1842, at 3, col. 6; Apr. 20, 1842, at 3, col. 1,6.

68. The Aldrich petition in bankruptcy was filed on March 22, 1842, and the Warren petition on April 11, 1842. 3 General Bankruptcy Records, District of Illinois, 258, 471, on file in Federal Records Center, Chicago. Over the winter of 1841-42, the proposed land development of Warren, Illinois, had failed when the Mormon leaders disagreed with Messrs. Aldrich and Warren over the arrangements and privileges they would grant the new Mormon immigrants. D. OAKS & M. HILL, *CARTHAGE CONSPIRACY* 53-55 (1975). Aldrich was later tried for the murder of Joseph Smith; Warren was one of the defense counsel. *Id.* at 53, 83.

69. *The Wasp*, Apr. 16, 1842, at 3, col. 4.

70. *The Wasp*, May 7, 1842, at 3, cols. 2,3,4. Others whose notices appeared in this first group were "Judge" Elias Higbee, Arthur Morrison, George Morey, John P. Green, Samuel H. Smith, Jared Carter, Henry Sherwood, Reynolds Cahoon, and Vinson Knight. See *Sangamo Journal*, May 6, 1842, at 1, cols. 4-7; and July 1, 1842, at 3, cols. 1-7; at 4, cols. 1-7. Nine months later, C.B. and M.B. Street also filed in bankruptcy, but the fact that they did not raise their filing as a defense against the 1844 lawsuit brought by Peter Haws and his associates indicates that the Street brothers may not have received a discharge in bankruptcy. See *The Wasp*, Jan. 28, 1843, at 4, col. 3.

71. The additional names included Amos Davis, John S. Fullmer, Hiram Kimball, Edward B. Kimball, Windsor P. Lyon, William Niswanger, William Patton, Theron B. Warren, and Charles Warner. *The Wasp*, May 14, 1842, at 3, col. 4; June 18, 1842, at 3, col. 4; July 16, 1842, at 3, cols. 2,4; *Sangamo Journal*, July 1, 1842, at 3, col. 4, at 4, col.

Joseph Smith received his first explanation of the Bankruptcy Act from Calvin A. Warren in Nauvoo on April 14, 1842.<sup>72</sup> The *History of the Church*, taken from Joseph's personal papers and the notes of his clerks, records a brief but generally accurate summary of the Act at that point, along with Joseph's doubts about whether he should seek the relief it provided.<sup>73</sup> Despite his expressed concern about "the justice or injustice of such a principle in law," Joseph finally decided he was justified in taking "that course to extricate [himself], which the law had pointed out,"<sup>74</sup> due to the mobbings and plunderings he had suffered (blamed in part on inaction by the very Congress that had enacted the new bankruptcy law), the necessity of contracting heavy debts for the benefit of his family and friends, the fact that bankruptcy petitions by his own debtors had prevented his collections from them, and the fact that he would otherwise face destitution, "vexatious writs, and lawsuits, and imprisonments." On April 15 he was "busily engaged in making out a list of debtors and an invoice of [his] property to be passed into the hands of the assignee."<sup>75</sup> His list of debts totaled \$73,066.38; the invoice of his properties totaled approximately \$20,000 in money and notes receivable, plus inventoried real and personal property with no estimated value recited.<sup>76</sup>

On Monday, April 18, 1842, Joseph and other Mormon leaders rode to Carthage to swear to their affidavits of insolvency before the clerk of the County Commissioner's Court, as required

7. By letter dated June 3, 1842, to Joseph Smith, attorney Calvin Warren referred to a total of 26 bankruptcy cases committed to his care in Nauvoo, and with his letter of July 13, 1842, he transmitted notices of another six for publication in the *Nauvoo Wasp*. Box 3, folder 2, Joseph Smith Collection.

72. 4 HISTORY OF THE CHURCH 594.

73. *Id.* at 594-95. The law provided that any person "owing debts, which shall not have been created in consequence of a defalcation as a public officer; or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity" would be privileged to file a petition setting out a list of creditors and the amount due to each, together with an accurate inventory of all of his property, rights, and credits, and "declare themselves to be unable to meet their debts and engagements . . . ." See note 91 *infra*. The Act provided that such persons "shall be deemed bankrupts within the purview of this act," whereupon the court should appoint an assignee to manage and dispose of their property (but exempting the family's wearing apparel and necessary household articles not exceeding \$300 in value) and pay the proceeds to the creditors, after which a qualifying bankrupt would "be entitled to a full discharge from all his debts . . . ." The Bankruptcy Act of 1841, ch. 9, §§ 1-4, 5 Stat. 440-43.

74. 4 HISTORY OF THE CHURCH 594-95.

75. *Id.* at 599-600.

76. The complete list of Joseph's debts as cited by F. BRODIE, *supra* note 39, at 266 is as follows:

by law.<sup>77</sup> Joseph Smith explained in the *History of the Church* that he and his companions “were reduced to the necessity of availing [them]selves of the privileges of the general bankrupt law” because of the “utter annihilation of [their] property by mob violence in the state of Missouri, and the immense expenses

To	The United States of America, Sept. 10, 1840	\$ 4,866.38
To	Horace R. Hotchkiss and Co., Fair Haven, Conn.	\$50,000.00
To	John Wilkie, Nauvoo	\$ 2,700.00
To	William and Jacob Backenstos, Carthage	\$ 1,000.00
To	John (name illegible)	\$ 1,100.00
To	Truman Blodget	\$ 100.00
To	William F. Cahoon, Nauvoo	\$ 500.00
To	Edward Partridge's estate, Nauvoo	\$10,000.00
To	Amos Davis, Nauvoo	\$ 2,800.00
Total		\$73,066.38

The list, which was entitled “Schedule setting forth a list of petitioners, creditors, their residence and the amount due each,” uses terminology almost identical to the language of the bankruptcy act. See The Bankruptcy Act of 1841, ch. 9, § 1, 5 Stat. 440-41.

An undated three-page “Inventory of Property,” signed by Joseph Smith, but in the hand of another person apparently acting as scribe, lists money and notes receivable (including the \$4,866.38 note from C.B. and M.B. Street) in the sum of \$19,797.38, miscellaneous household goods including furniture, apparel, utensils and furnishings, and holdings of an “undivided third part” of specified lots in most of the first 89 numbered blocks in Nauvoo. Joseph Smith Collection; Item 7-Z-b-7, Wilford C. Wood Collection, Woods Cross, Utah. This Inventory of Property and the schedule of creditors apparently arose out of Joseph's efforts to comply with the Bankruptcy Act. See generally FLANDERS 168-70.

77. 4 HISTORY OF THE CHURCH 600. The Prophet's complete application in bankruptcy has never been discovered. The only records of Illinois district court proceedings preserved for this period were transcribed—pursuant to a District Court Order dated May 6, 1856—from five categories of cases, the last of which reads as follows:

5th. Cases in Bankruptcy in which real estate lying in the Southern District [of Illinois] has been sold or ordered to be sold [to execute a decree of final discharge].

1 Complete Record, District Court, U.S. District of Illinois 1, Federal Records Center, Chicago, Ill. Since Joseph Smith never received a decree of discharge, as discussed below, it is likely that neither his application nor any of the subsequent proceedings were officially preserved. See FLANDERS 169 n.68. In addition, Illinois District Court records for the period up to 1858 were transferred to the Federal Records Center in Chicago, where many were destroyed in the Great Fire of 1871. See Treasury Papers. In any case, six volumes of General Bankruptcy Records for cases filed with the United States District Court for Illinois between February 1, 1842, and March 1, 1843, have been preserved at the Federal Records Center, but none of the proceedings involving the Mormon applicants were contained therein, and at least one complete volume (No. 5) was missing.

which [they] were compelled to incur, to defend [them]selves from the cruel persecutions of that state . . . ."<sup>78</sup> Within a few weeks, Joseph wrote Horace R. Hotchkiss, probably his largest creditor. He explained why he had been forced to this step, and assured him of his continuing intention to pay the debt in full, perhaps even from the inventory of property that would be turned over to the assignee upon obtaining a discharge in bankruptcy.<sup>79</sup>

The persons who filed bankruptcy applications during the spring of 1842 contemplated, and most of them received, discharges from all their debts during the fall of 1842.<sup>80</sup> The national mood at that time was in favor of facilitating these discharges. In fact, a Treasury circular of May 9, 1842, officially discouraged U.S. Attorneys from opposing applications in bankruptcy, and limited their fees to a mere per diem allowance of \$5 while attending bankruptcy hearings to oppose such applications.<sup>81</sup> On January 3, 1843, the clerk of the United States District Court in Illinois reported that no decrees of final discharge had yet been refused in that court and that only eight of the 1,433 applications then pending in bankruptcy had been opposed by creditors.<sup>82</sup>

A study of available records in the bankruptcy cases of non-Mormon land developer Mark Aldrich and non-Mormon bankruptcy attorney Calvin A. Warren shows that they obtained discharges from substantial debts and then reacquired most of their

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78. 4 HISTORY OF THE CHURCH 600. Further explanations and justifications for this step are supplied in B. ROBERTS, *THE RISE AND FALL OF NAUVOO* 132-33 (1965).

79. 5 HISTORY OF THE CHURCH 6-7. See exchanges of correspondence with Hotchkiss, in which Joseph Smith reassured Hotchkiss of his willingness to pay the debt "as fast as possible" and Hotchkiss in turn agreed not to disturb possession by persons who bought lots from Joseph Smith, even though Hotchkiss still held title to the property. *Id.* at 51-52, 195-96, 382-83.

80. According to contemporary newspaper notices and correspondence to Joseph Smith from Calvin Warren, dated June 3, 1842, and from the firm of Aldrich & Chittenden, dated July 28, 1842, the District Court in Springfield granted primary decrees for at least 26 Mormon applicants on June 8, 1842, and scheduled hearings for their final discharge on October 1, 1842. Box 3, folder 2, Joseph Smith Collection. Except for Joseph and Hyrum Smith, there is no indication that any of these applicants failed to obtain a discharge at the October 1 hearings in Springfield, and even Hyrum Smith was ultimately discharged in December. Note 114 *infra*. Dr. Samuel Marshall of Carthage was appointed the first bankruptcy commissioner for Hancock County and was succeeded by Chauncey Robison after Marshall's resignation in July 1842. Joel Catlin was the bankruptcy assignee for Hancock County. See correspondence between Joseph Smith, Calvin Warren, and Aldrich & Chittenden.

81. See Letter from Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, Aug. 2, 1842, in Treasury Papers.

82. Status report from James F. Owings, the Illinois District Court clerk, in response to request from Daniel Webster, Secretary of State, Jan. 3, 1843, in 2 S. EXEC. DOC. NO. 19, 27th Cong., 3d Sess. 173-74 (1842-43).

own property, directly or indirectly, by purchase at relatively nominal prices at the bankruptcy sale.<sup>83</sup> Such abuses led to the early repeal of the bankruptcy legislation.<sup>84</sup>

Despite the official reluctance to challenge bankruptcy applications and the relative ease of obtaining discharges during this period, Joseph Smith's case was singled out for special attention and opposition. His initial enemy in this effort, as in many others, was John C. Bennett, the disaffected Mormon who had been expelled from his positions as Mayor of Nauvoo and counselor to Joseph Smith late in May 1842.<sup>85</sup> In June and July, Bennett published a series of letters in the Springfield, Illinois *Sangamo Journal*, making a wide range of accusations against Joseph Smith, including a charge that he was attempting to swindle his creditors by fraudulently conveying or "secreting property . . . for the benefit of himself and family in order to obtain the benefit of the Bankrupt Act."<sup>86</sup>

83. Both Aldrich and Warren were finally discharged by the court on October 4, 1842. Warren bought his own real property (consisting of nine substantial tracts) at public auction in Quincy for the sum total of \$23.12, thereby retiring debts aggregating \$335.12 for less than 7 cents on the dollar. 3 General Bankruptcy Records, United States District Court for the District of Illinois 471, 493-96 (1838-1858), on file in Federal Records Center, Chicago.

Aldrich retired more than \$25,000 in debts in exchange for total sale proceeds of \$163.25 (less than 1 cent on the dollar), paid by Aldrich himself, by C.A. Warren and another associate for 23 parcels of land and numerous notes. Since Warren's claim (presumably for attorneys' fees) was the only creditor's claim proved, all of the sale proceeds were paid to Warren. Thereupon, Aldrich and his close friends, perhaps acting as strawmen in his behalf, came back into possession of virtually all of his property. *Id.* at 258-66, 283-88, 500; see D. OAKS & M. HILL, *supra* note 68, at 54-55.

84. In Illinois, the situation got so far out of hand that on February 10, 1843, the General Assembly at Springfield adopted a joint resolution calling for a repeal of the bankruptcy act in view of the "unjust advantages of the law," which allowed debtors utterly to disregard their obligations. While not branding as dishonest all who applied for bankruptcy, the legislature nonetheless recognized that its confidence in such persons was impaired and resolved not to appoint any such person "to any office of honor or trust." JOURNAL OF THE HOUSE OF REPRESENTATIVES OF ILLINOIS, 13th Gen. Ass'y 358 (1843).

85. 5 HISTORY OF THE CHURCH 12, 18-19; B. ROBERTS, *supra* note 78, at 135-40. Bennett apparently was also involved in efforts to extradite Joseph Smith to Missouri to face charges involving the attempted assassination of ex-Governor Boggs. See note 34 *supra*; 5 HISTORY OF THE CHURCH 250-51; J. STEWART, *supra* note 34, at 171.

86. Letter from Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, Aug. 2, 1842, in Treasury Papers (summarizing "Gen. Bennett's Third Letter" in *Sangamo Journal*, July 15, 1842, at 2, cols. 6-7).

John C. Bennett claimed that he could have produced evidence of other fraudulent conveyances, but stated that his published list should be "sufficient to give him [Joseph Smith] a comfortable home in the State penitentiary, at Alton, for some years to come, if Missouri does not get him first." Bennett concluded his charges with the following rhetoric: "Can this swindler take the benefit of the bankrupt law! Never! No, never!! Let a prosecution be at once instituted against his holiness, and let the law have its just operations ONCE." *Sangamo Journal*, July 15, 1842, at 2, col. 6. Contrary to Bennett's

The first of Bennett's letters appeared during the same month that U.S. Attorney Justin Butterfield obtained a default judgment (June 1842) against Joseph Smith and others in the matter of the steamboat obligation. During August 1842, Butterfield wrote for and obtained permission from the Solicitor of the Treasury to oppose Joseph and Hyrum Smith's applications for discharge in bankruptcy.<sup>87</sup> In making this request, Butterfield referred specifically to John C. Bennett's charges and even enclosed a copy of one of Bennett's July letters in the *Sangamo Journal*. Butterfield also indicated that the other defendants were all "insolvent."<sup>88</sup> In his reply, the Solicitor of the Treasury directed Butterfield to "take the necessary steps" to oppose the applications of both Joseph and Hyrum Smith, consistent with the aim of keeping the cost to "as small an amount" as possible.<sup>89</sup>

After a September trip to consult land records in Nauvoo and Carthage, Butterfield wrote the Treasury Solicitor on October 11, 1842, that he had found sufficient evidence to sustain Bennett's accusations of fraud by Joseph Smith and had even found other deed conveyances to or from Joseph not mentioned by Bennett.<sup>90</sup> Butterfield probably discovered some of the many conveyances Joseph Smith continued to execute or receive (probably on the advice of counsel) in his capacity as trustee for the Church after he had filed for bankruptcy in his personal capacity.<sup>91</sup> In any

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implications, the Bankruptcy Act did not provide any criminal penalties for fraud or other violations of the Act.

87. Letter from Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, Aug. 2, 1842, in Treasury Papers. The United States had standing to oppose the discharge since it was a creditor under the judgment on the steamboat debt. This was, in fact, the most important claim, since the bankruptcy act provided that debts due the United States should be paid in full, ahead of all other creditors. Bankruptcy Act of 1841, ch. 9, § 5, 5 Stat. 444.

88. Letter from Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, Aug. 2, 1842, in Treasury Papers. Since none of the defendants had yet been discharged in bankruptcy and since there is no evidence that Peter Haws or George Miller ever filed for bankruptcy, Butterfield must have been referring to the other signatories' inability to pay their debts rather than to any formally adjudicated insolvency.

89. Letter from Charles B. Penrose, Solicitor of the Treasury, to Justin Butterfield, Aug. 12, 1842, in Treasury Papers. Notwithstanding the government's policy of confining the per diem allowance to time spent actually attending hearings, the Solicitor agreed to compensate Butterfield at "the customary fee for each day engaged about this business," plus travel expenses. *Id.*

90. Letter from Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, Oct. 11, 1842, in Treasury Papers.

91. See 4 HISTORY OF THE CHURCH 608; 5 HISTORY OF THE CHURCH 21, 25, 296.

In evaluating Joseph Smith's petition for bankruptcy, Flanders mistakenly charges that "Smith chose to ignore the provision of the law that no trustee-in-trust was eligible for bankruptcy." FLANDERS 169. However, the bankruptcy act did not prevent the dis-

event, Butterfield wrote that he had appeared at the October 1 hearings in Springfield, armed with certified copies of various deeds, and had successfully opposed the Smiths' discharges in bankruptcy.<sup>92</sup>

Butterfield's written objections to discharge, as formally filed with the court on October 1, contained several general grounds for opposition,<sup>93</sup> which may be summarized as follows:

1. *Wrongful conveyances in contemplation of bankruptcy.* Butterfield first charged that Joseph Smith transferred property in contemplation of bankruptcy to persons who were not bona fide creditors or purchasers for a valuable consideration.<sup>94</sup> Butterfield did not identify any specific conveyances or include other supporting details for his general objections, other than by reference in his correspondence to Bennett's published accusations. Bennett's earlier attack had specified seven conveyances that he alleged were fraudulently made by Joseph Smith—one to his wife, Emma, four to his children, and two to himself as trustee for the Church. However, four of these conveyances were made by persons not related to Joseph Smith or his family and therefore would not qualify as conveyances "made or given by [a] bankrupt" within the prohibitions of the Act.<sup>95</sup> As to the remaining

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charge of persons who were trustees, but only of "debts" . . . created . . . [by an] executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity . . . ." Bankruptcy Act of 1841, ch. 9, § 1, 5 Stat. 441 (emphasis added). Statute quoted more fully *supra* note 73.

A person who could not obtain a bankruptcy discharge from his trustee debts was nevertheless eligible for discharge from his personal debts, which is what Joseph Smith attempted to obtain. See *Chapman v. Forsyth*, 43 U.S. (2 How.) 202 (1844); *Morse v. City of Lowell*, 48 Mass. (7 Met.) 152 (1843). JAMES, *PRINCIPLES AND PRACTICE OF THE 1867 LAW OF BANKRUPTCY* 149 (1957).

92. Letter from Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, Oct. 11, 1842, in Treasury Papers.

93. Objections to discharge of Joseph Smith under Bankruptcy Act dated Oct. 1, 1842, in Box 4 of Joseph Smith Collection and as items 7-Z-b-8 & 39 in Wood Collection. The Wood Collection is in the custody of Lillian Woodbury Wood at Woods Cross, Utah.

94. This objection relates generally to the second portion of section 2 of the Bankruptcy Act, which provides:

[A]ll other payments, securities, conveyances, or transfers of property, or agreements made or given by such bankrupt in contemplation of bankruptcy, to any person or persons whatever, not being a bona fide creditor or purchaser, for a valuable consideration, without notice, shall be deemed utterly void, and a fraud upon this act . . . .

Bankruptcy Act of 1841, ch. 9, § 2, 5 Stat. 442.

95. See note 104 *infra*. These four conveyances were allegedly executed and recorded during 1841. In a subsequent action to recover some of these properties, Joseph Smith's widow argued and the court apparently found that valid monetary consideration for these and other third-party conveyances to Emma or the Smith children was furnished by other Church members or by Emma Smith from her separate property, rather than by Joseph. See note 170 and accompanying text *infra*; Chancery Records at 516, 520-21.



three, the issue was whether Joseph made them "in contemplation of bankruptcy."

2. *Preferential transfers to certain creditors prior to passage of the Act.* Butterfield further charged that since January 1, 1841, Joseph Smith had made invalid transfers to some of his creditors in preference to other creditors in contemplation of the passage of the Bankruptcy Act.<sup>96</sup> Although Butterfield listed no examples, Bennett's earlier charges had. All of the conveyances Bennett had specified in his published letters were executed and recorded after January 1, 1841. However, none were made to *creditors* of Joseph Smith or his family. Therefore, unless Butterfield found proof that Joseph had made at least one conveyance to a creditor, this objection was ill-founded, even if such conveyance could be shown to have been made "in contemplation of passage" of the Bankruptcy Act, as was alleged but not established.

3. *Transfers after passage of the Act.* According to Butterfield's objections, after passage of the Act on August 19, 1841, Joseph Smith transferred property in contemplation of bankruptcy to some of his creditors and to other persons in order to give them a priority or preference over his general creditors.<sup>97</sup> Of the seven conveyances cited by Bennett, only two were dated or recorded after passage of the Act. One was the major conveyance to the Church, discussed below. Again, the issue was whether these two conveyances were made "in contemplation of bankruptcy."

4. *Concealment of assets and omissions from inventory.* Perhaps relying on the fact that the conveyances cited in Bennett's newspaper accusations were not found in the inventory

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96. This charge relies on the following provision of section 2 of the Act:

And in case it shall be made to appear to the court, in the course of the proceedings in bankruptcy, that the bankrupt, his application being voluntary, has, subsequent to the first day of January last [1841], or at any other time, in contemplation of the passage of a bankrupt law, by assignments or otherwise, given or secured any preference to one creditor over another, he shall not receive a discharge unless the same be assented to by a majority in interest of those of his creditors who have not been so preferred . . . .

Bankruptcy Act of 1841, ch. 9, § 2, 5 Stat. 442.

97. This allegation corresponds with the first portion of section 2 of the Act, which reads:

And be it further enacted, that all future [i.e., post-August 19, 1841] payments, securities, conveyances, or transfers of property, or agreements made or given by any bankrupt, in contemplation of bankruptcy, and for the purpose of giving any creditor, endorser, surety, or other person, any preference or priority over the general creditors of such bankrupts; . . . shall be deemed utterly void, and a fraud upon this act . . . .

*Id.*

of property filed by Joseph Smith, Butterfield charged that Joseph failed to make an accurate inventory of his property rights and credits as required by the Act, thereby willfully concealing such property from his creditors or attempting to preserve the same for the future benefit of himself and family by causing conveyances to his wife, children, and friends to be made but not listed in such inventory.<sup>98</sup> This objection is similar to some of the foregoing objections, but it relies on a separate section of the Act.

Since he was then an implacable enemy of the Mormons, John C. Bennett's charges of fraud carry little weight. But those of U.S. Attorney Justin Butterfield, one of the best lawyers of his day,<sup>99</sup> are entitled to careful consideration.

If any of the foregoing allegations were duly established as to the deeds in question, then under the bankruptcy law such conveyances could have been deemed "utterly void, and a fraud upon this act." In that event, the assignee in bankruptcy could have recovered the property so conveyed as part of the assets available to satisfy creditors, and the culpable bankrupt could have been disqualified from receiving a discharge under the Act.<sup>100</sup> In order for any deed executed by Joseph Smith to be deemed void and fraudulent under this law, however, the Government had to prove that the deed had been made either "in contemplation of bankruptcy" or "in contemplation of the passage of a bankrupt law."<sup>101</sup> There is no evidence that Joseph Smith had understood or even heard of the Bankruptcy Act until attorney Warren explained it to him in Nauvoo on April 14, 1842. As shown earlier, none of the Mormon newspapers carried any prior information concerning the new bankruptcy law, and no one in or around Nauvoo had filed for bankruptcy before Calvin Warren advertised in the Nauvoo paper and visited Nauvoo to promote his bankruptcy business. Joseph Smith filed 4 days later, and a procession of other Mormons followed.<sup>102</sup>

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98. Section 1 of the Act provides that all persons applying for bankruptcy must set forth "an accurate inventory of his or their property, rights, and credits, of every name, kind, and description, and the location and situation of each and every parcel and portion thereof," and shall not "remove his goods, chattels, and effects, or conceal them to prevent their being levied upon, or taken in execution, or by other process; or make any fraudulent conveyance, assignment, sale, gift, or other transfer of his lands, tenements, goods or chattels, credits, or evidence of debt . . . ." *Id.* § 1, at 441-42. See *Inventory of Property*, *supra* note 76.

99. See note 32 *supra*.

100. Bankruptcy Act of 1841, ch. 9, § 2, 5 Stat. 442.

101. *Id.*

102. See text accompanying notes 65-71 *supra*.

As previously noted, Justin Butterfield did not substantiate his general allegations of fraud with any evidence. Nor did he make a specific allegation that prior to filing in bankruptcy Joseph Smith had made a single conveyance in contemplation of bankruptcy. In contrast, there is abundant evidence, summarized above, to show that the deeds probably relied upon by Justin Butterfield at the October 1 bankruptcy hearing were executed pursuant to a policy adopted prior to the Bankruptcy Act—and vigorously promoted by the Quorum of the Twelve—of separating Joseph's personal and fiduciary properties and of making adequate provision for his family out of the latter.

In addition, each of Butterfield's objections to discharge ignored the following crucial provision of the Act:

*Provided*, That all dealings and transactions by and with any bankrupt, bona fide made and entered into more than two months before the petition filed against him, or by him, shall not be invalidated or affected by this act.<sup>103</sup>

Thus, the bankruptcy law did not invalidate or affect any such dealings and transactions "entered into more than two months before" the filing of a petition in bankruptcy. Consequently, all of Joseph's bona fide deeds prior to February 18, 1842, were immune from attack under the bankruptcy law. Although we cannot be sure which deeds were relied upon by Butterfield, all but one of the deeds publicized by Bennett were dated as having been made in 1841, and only two were recorded after February 18, 1842.<sup>104</sup>

By far the most substantial conveyance listed by Bennett was the last deed recorded by Joseph Smith before he filed for bankruptcy: the conveyance dated October 5, 1841, transferring 239 Nauvoo lots (300 acres) to himself as trustee for the Church.<sup>105</sup> Bennett claimed that, despite its earlier date, this deed was actually executed a day or two before Joseph's filing for bankruptcy—that it was fictitiously backdated to October 5, 1841, and then recorded at the county seat April 18, 1842, while Joseph was there to file for bankruptcy.<sup>106</sup> If the deed was backdated in this

103. Ch. 9, § 2, 5 Stat. 442 (1841).

104. Letter from John C. Bennett to the Editor, July 4, 1842, in *Sangamo Journal*, July 9, 1842, at 2, cols. 6-7 (listing the seven separate conveyances).

105. See text accompanying notes 57-59 *supra*.

106. Letter from John C. Bennett, *supra* note 104. In support of this charge, Bennett baldly stated, without further elaboration: "for so Joe informed me." He also claimed that a "Mr. Marshall, Mr. Sherman and others, of Carthage, will state that the writing [on the deed] was *fresh*, and *changed materially in appearance soon after*." *Id.*

manner, it would have been fraudulent and void under the bankruptcy law.

There is persuasive evidence, however, to support the accuracy of the October 5, 1841, date. First, the sworn statements of reliable witnesses to the delivery and notarization of the deed on October 5 are *prima facie* evidence of its authenticity. Second, the authors' review of official deed records for this period shows that it was not uncommon for executed deeds to be held unrecorded for months or even years before being entered in the official county records. This was particularly true during the period preceding the spring of 1842, when the Nauvoo Registry of Deeds was established to afford greater recording convenience for the Mormons. Third, there is no indication in Church journals that Joseph Smith visited Carthage at any time between October 5, 1841, and April 18, 1842. Finally, and perhaps most importantly, the conveyance in question logically related to other transactions that took place within the Church organization in October 1841. As Flanders concludes:

The coincidence of the bankruptcy with the recording of this deed is not extraordinary, and there seems to be nothing to substantiate Bennett's charge. The October 5, 1841, date was acknowledged on the deed by Ebenezer Robinson as Justice of the Peace. It was the last day of a semi annual General Conference that had concerned itself with the Hotchkiss debt and the land problems of the Church in general. The Twelve had been urging Smith to get the Church properties deeded to the Trustee-in-Trust, and it is reasonable to assume that the transfer in question was made at that time.<sup>107</sup>

After Butterfield successfully opposed the Joseph and Hyrum Smith applications for discharge in bankruptcy at the October 1, 1842, hearings, the court set their cases over for further hearings on December 15. Butterfield predicted to his superiors that he would defeat the application of Joseph Smith in December and thereafter set aside the alleged fraudulent conveyances and subject them to execution by proceedings in chancery.<sup>108</sup>

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107. FLANDERS 170. Flanders suggests that "the transaction was probably recorded in the Nauvoo Registry of Deeds," but the authors' review of the 611 deeds recorded there between its beginning and ending entries on March 10, 1842 and February 25, 1846 discloses no evidence that the deed was ever recorded in Nauvoo. See Nauvoo No. 02432R, Church Historical Office Archives, Salt Lake City, Utah (only two deeds were recorded in the Nauvoo Registry before April 18, 1842).

108. Letter from Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, Oct. 11, 1842, in Treasury Papers.

During November and early December, Joseph conferred with counsel and made further preparations to pursue his attempt to be discharged in bankruptcy. On November 7, 1842, for example, the *History of the Church* records that he conferred with his brother Hyrum and some of the Twelve "concerning the contemplated journey to Springfield on the 15th [of] December next, and what course ought to be pursued in reference to the case of bankruptcy."<sup>109</sup> In the afternoon he met with his attorney, Calvin A. Warren, and

called upon some of the Twelve and others to testify before Squire Warren what they knew in reference to the appointment of trustee-in-trust, &c., showing also from the record that [he] was authorized by the Church to purchase and hold property in the name of the Church, and that [he] had acted in all things according to the counsel given to [him].<sup>110</sup>

This concern with the trustee status further suggests that Butterfield's opposition, which had caused the case to be put over to December, was directly related to Joseph's actions as trustee-in-trust.

A journal entry of December 4, 1842, records Joseph's further efforts to inventory his property and schedule his liabilities so that he and Hyrum "might be prepared to avail [themselves] of the laws of the land as did others."<sup>111</sup> On December 9, Hyrum Smith, Willard Richards, Heber C. Kimball, Peter Haws, and others started for Springfield to attend the bankruptcy hearing.<sup>112</sup> Why Joseph did not accompany them does not appear.<sup>113</sup>

Contrary to Butterfield's confident prediction that he would finally defeat the applications of Joseph and Hyrum Smith, Hyrum was granted his discharge in bankruptcy at the December 15 hearing, and an "arrangement" was made with Justin Butterfield for Joseph's discharge.<sup>114</sup> By written offer dated December

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109. 5 HISTORY OF THE CHURCH 183-84.

110. *Id.* at 184.

111. *Id.* at 200. *See also id.* at 195-97.

112. *Id.* at 200. The others were Benjamin Covey, William Clayton, Alpheus Cutler, Reynolds Cahoon, and Henry G. Sherwood. *Id.* At least the last three had earlier filed for bankruptcy and probably received discharges at the October 1, 1842 hearings. *See note 70 supra.*

113. *See* 5 HISTORY OF THE CHURCH 200, 204, 207, for accounts of his activities during this period.

114. Copy of decree of final discharge entered by U.S. District Court for Illinois on December 16, 1842, certified by Court Clerk James F. Owings, found in Hyrum Smith Collection, Ms. d 891, Box 2, Church Archives, Salt Lake City, Utah. *See* 5 HISTORY OF THE CHURCH 205. No explanation has been discovered as to why Hyrum Smith was allowed his discharge, but it was presumably due to his relatively small holdings in contrast to

16, 1842, Joseph's delegates to Springfield proposed, on behalf of the Church High Council, "to secure the payment of the judgment in favor of the United States" by providing "a Bond, signed by individuals sufficiently good and responsible," for the amount of the judgment (\$5,212.49), payable in four equal annual installments with interest. Payment on the bond, in turn, would be secured "by a mortgage on real estate, situated in the State of Illinois, to which there shall be a perfect title and worth double the amount of the said debt."<sup>115</sup>

Despite the obvious generality of the Mormon proposal (which did not identify the individuals who would sign the bond or the real estate that would be given as security) and the disadvantage of a 4-year payoff period, Butterfield immediately wrote the Treasury recommending that the offer be accepted and that the Government's resistance be withdrawn so that Joseph Smith could be discharged in bankruptcy.<sup>116</sup> Butterfield's willingness to accept this offer—a startling contrast to his previous spirited opposition to Joseph Smith—may have been affected by his recent closer acquaintance with Joseph while acting as counsel for the Mormon prophet in another matter. In a notable habeas corpus controversy that began in October and concluded in a federal proceeding on January 5, 1843, Butterfield successfully obtained Smith's complete release from a Missouri extradition order on charges of complicity in the attempted murder of ex-Governor Boggs.<sup>117</sup> During the trial preparation and in-court proceedings in

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Joseph's. The Treasury Department consistently regarded Joseph Smith as the primary target for opposition, and the Solicitor's consent to Hyrum's discharge was apparently neither sought nor given. In addition, Butterfield listed fewer grounds of objection in his October opposition to Hyrum's application than in that of Joseph Smith. Item 4-N-b-40, folder #44, in Wood Collection; see note 93 *supra*.

115. Letter from "the High Council," signed by Hyrum Smith, Peter Haws, Heber C. Kimball, Henry G. Sherwood, Alpheus Cutler, and Willard Richards, to Justin Butterfield, Dec. 16, 1842, in Treasury Papers.

116. Letter from Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, Dec. 17, 1842, in Treasury Papers.

117. See note 34 *supra*. Butterfield was first retained October 17, 1842, by Sidney Rigdon acting as first counselor in the Church Presidency (apparently by referral from bankruptcy attorney Calvin A. Warren and his law partner, James Ralston) while Joseph Smith was in hiding to avoid being kidnapped back to Missouri. See 5 HISTORY OF THE CHURCH 173-79. Joseph Smith confirmed this selection a few days later, after reviewing Butterfield's written opinion favoring Smith's position and recommending a discharge by writ of habeas corpus. See *id.* at 179. On Butterfield's advice, Smith had himself arrested in Nauvoo on December 26, arrived in Springfield December 30, and appeared before Judge Pope for trial January 4, 1843. *Id.* at 206, 209, 211-12, 220.

A contemporary of Justin Butterfield described one colorful episode during this trial:

On the trial of Joe Smith, the great Mormon prophet, at Springfield, before His Honor Judge Pope, of the United States District Court, the courtroom was

Springfield the last week of December and the first week of January, Joseph Smith worked closely with Butterfield and was impressed by his forceful arguments and judicious management of the case.<sup>118</sup> This cordial respect was apparently mutual, and during the trial, which was held before the same federal judge (Pope) as had issued the U.S. note default judgment and presided over the bankruptcy matter, Butterfield stoutly defended Joseph Smith as "an innocent and unoffending man."<sup>119</sup> As compensation for his legal services, Butterfield received \$50 in cash and accepted two notes of \$230 each from Joseph Smith,<sup>120</sup> hardly indicating any distrust of the Prophet's personal or financial integrity. Joseph also took advantage of this relationship to seek Butterfield's advice on January 5 concerning the pending bankruptcy matter and certain technical consequences that might flow from his discharge in bankruptcy.<sup>121</sup>

Meanwhile, the Treasury Solicitor, by return letter of January 11, 1843, directed Butterfield to reject the Mormon proposition he had recommended. The Solicitor reasoned that if the bond offered by the Church High Council was defaulted, the prospect

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crowded, and a large number of ladies were seated on both sides of the judge, upon the bench. Butterfield, who had been employed to defend the prophet, in opening the case, bowing to the judge and waving his hand to the ladies, said: "May it please your Honor, I appear before the Pope, in the presence of angels, to defend the prophet of the Lord!"

U. LINDER, *REMINISCENCES OF THE EARLY BENCH AND BAR OF ILLINOIS* 88 (2d ed. 1879). Joseph Smith and all the ladies in attendance, including Mary Todd Lincoln, appeared to enjoy this occasion. J. STEWART, *supra* note 34, at 178. Judge Pope's long and scholarly decision of January 5, 1843, completely clearing Joseph Smith of all charges and granting his discharge in habeas corpus, is reproduced in *The Wasp*, Jan. 28, 1843, at 1, cols. 2-4 & at 2, cols. 1-4, and in 5 *HISTORY OF THE CHURCH* 223-31.

118. 5 *HISTORY OF THE CHURCH* 222. The Prophet also had cordial social encounters and religious discussions with Justin Butterfield, Judge Pope, and Judge Pope's family. *Id.* at 223, 232-33. Before departing Springfield for Nauvoo on January 6, Joseph wrote:

Judge Pope's son wished me well, and hoped I would not be persecuted any more, and I blessed him. Mr. Butterfield said I must deposit my discharge and all my papers in the archives of the Temple when it is completed.

*Id.* at 233. Judge Pope's son was John Pope, who 20 years later became for a short time the commanding general of the main Union army on the Potomac. S. MORISON, *THE OXFORD HISTORY OF THE AMERICAN PEOPLE* 650 (1965).

119. 5 *HISTORY OF THE CHURCH* 222. Butterfield also described Joseph Smith in the following terms: "If there is a difference between him and other men, it is that this people believe in prophecy, and others do not; the old prophets prophesied in poetry and the modern in prose." *Id.*

120. *Id.* at 232.

121. See Joseph Smith Journal, Dec. 21, 1842, to Mar. 10, 1843, at 102-03 (Jan. 1843), on file in box 1, folder 5, Church Archives. The subject matter of this discussion primarily concerned the status of the Hotchkiss debt and the survivability following bankruptcy of any rights to Nauvoo properties purchased from the Hotchkiss syndicate.

of collecting it would be at least as formidable as a proceeding in equity against the assets of Joseph Smith. As a counteroffer, however, the Solicitor proposed an immediate payment of one-third of the debt with a confession of judgment for the balance, to be secured by a mortgage payable in three annual installments. He authorized Butterfield to withdraw opposition to the discharge in bankruptcy if these terms were accepted, but otherwise directed him to resist the discharge and proceed to collect the judgment by a suit in equity against Smith's property.<sup>122</sup>

This counterproposal, which might well have been put into effect, was either delayed or failed to reach Butterfield at all. On May 25, 1843, Butterfield sent a second letter inquiring whether the Treasury would authorize him to accept the original Mormon proposal.<sup>123</sup> It is unclear whether Butterfield ever received a response to that inquiry, and the matter apparently passed from official attention for over a year, although Joseph Smith and Butterfield did have further cordial communications on various subjects.<sup>124</sup> Before the matter of Joseph's discharge in bankruptcy was finally resolved, he and Hyrum were murdered at Carthage on June 27, 1844.<sup>125</sup> So it was that Joseph Smith was never dis-

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122. Letter from Charles B. Penrose, Solicitor of the Treasury, to Justin Butterfield, Jan. 11, 1843, in Treasury Papers.

123. Letter from Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, May 25, 1843, in Treasury Papers.

124. On March 19, and April 2, 1843, Joseph exchanged letters with Butterfield concerning the incarceration of Orrin Porter Rockwell, Joseph Smith's bodyguard, in a Missouri jail for allegedly shooting ex-Governor Boggs. 5 HISTORY OF THE CHURCH 303, 308, 326. Butterfield visited Nauvoo during October 1843, apparently for a number of reasons. Joseph Smith spent considerable time "preparing some legal papers," then "riding and chatting" with Butterfield and showing him the Smith farm on the prairie near Nauvoo. 6 HISTORY OF THE CHURCH 45-46. Immediately thereafter, Joseph instructed his scribe to turn over to Butterfield "all the papers relating to my land-claims in the Half Breed Tract in Iowa. . . ." *Id.* at 46. Possibly this was meant to collateralize the steamboat debt pursuant to the Treasury Department's counterproposal. At the Church semiannual conference that same weekend, Joseph publicly chastized his counselor, Sidney Rigdon, for having detained a document that Justice Butterfield had sent for the benefit of Joseph Smith, thereby putting Joseph to great disadvantage. *Id.* at 47-48. It is possible that the detained document was the Treasury Department's counteroffer which by then might have lapsed due to the passage of time. The final journal references to Justin Butterfield involve letters to Butterfield on January 18, 1844, and in May 1844, the last concerning Joseph Smith's attempt to obtain the federal post office appointment at Nauvoo then being resigned by Sidney Rigdon. *Id.* at 179, 406.

125. See D. OAKS & M. HILL, *supra* note 68 for an account of the murder and subsequent trial of the accused assassins. Five weeks after the assassination, Justin Butterfield included the following cryptic entry in his report of the June 1844 term of the district court: "I defeated Joseph Smith the Mormon Prophet from obtaining the benefit of the Bankrupt Act." Butterfield stated that he would next travel to Quincy to gather further evidence and then file a bill in chancery against the assets of Joseph Smith. Letter from



charged in bankruptcy because of unresolved United States Government opposition arising out of an unpaid judgment from his suretyship role in the purchase of the steamboat *Nauvoo*.<sup>126</sup>

The bankruptcy act that went into effect February 1, 1842, and proved to be of no benefit to Joseph Smith was of only short-lived benefit to anyone. In practice, it provided few protections for creditors; it was administered so loosely that it encouraged mishandling of properties and misstatement of assets and liabilities by debtors. It proved an insufficient aid to an honest debtor but an unlimited opportunity for fraud by a dishonest one.<sup>127</sup> The next session of Congress hastily repealed the law on March 3, 1843, just 13 months after it became effective.<sup>128</sup>

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Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, Aug. 6, 1844, in Treasury Papers.

126. Several historians have erroneously stated or implied that Joseph Smith received a discharge in bankruptcy. See B. ROBERTS, *supra* note 78, at 132-33; BRODIE, *supra* note 39, at 266. *Contra*, E. MILLER & D. MILLER, *supra* note 40, at 31-32. Flanders concluded that the attempt to obtain a final discharge was "a protracted and ultimately futile affair," but states no grounds for his conclusion. FLANDERS 171. See note 133 *infra*.

127. One contemporary commentator viewed the situation in retrospect:

It is almost universally admitted that the former [1841] bankrupt law was a failure in practice. It was simply a stupendous engine of destruction. Under it the estate of the debtor disappeared, but the benefits received by creditors were, in most cases, merely nominal. Its provisions were arbitrary, unreasonable and inflexible, and almost its sole merit was that under it a debtor could obtain a discharge and start in business again. The honest debtor cowered before it, for it was to him a standing menace of ruin. The dishonest debtor sneered at its pretentious details, for he saw how easily they could be evaded.

Bonney, *A Bill for a Bankrupt Law with Points in its Support*, in 60 POLITICAL PAMPHLETS 11 (1882).

128. An Act to repeal the bankrupt act, ch. 82, 5 Stat. 614 (1843). The act was repealed by a decisive vote of 172 to 84. C. WARREN, *supra* note 24, at 85. Applications pending on that date were still processed by the federal district courts. In Illinois, the last recorded application was filed February 28, 1843, and discharges were still being issued by early 1844. See 7 General Bankruptcy Records, U.S. District Court for the District of Illinois, Federal Records Center, Chicago. As of February 1, 1843, there were 4,468 unresolved petitions still pending in the United States. CONG. GLOBE, 37th Cong., 3d Sess. 124 (1862).

During its brief existence, more than 33,739 debtors availed themselves of the bankruptcy act to wipe out over \$445 million worth of liabilities while relinquishing only \$43 million worth of assets. Nationwide, only 765 applicants were refused discharge as of February 1, 1843, and only 30 were rejected on grounds of fraud. F. NOEL, *A HISTORY OF THE BANKRUPTCY CLAUSE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA* 143 (1918); CONG. GLOBE, 37th Cong. 3d Sess. 124 (1862); CONG. GLOBE, 27th Cong., 3d Sess. 341-42 (1843). One modern bankruptcy scholar has observed:

[T]he Act was passed, achieved its purpose of discharging thousands of debtors, and was repealed, before any decision as to its constitutionality was made by the Supreme Court. In other words, it had done its work and disappeared . . . .

C. WARREN, *supra* note 24, at 85.

With the death of Joseph Smith on June 27, 1844, the focus of controversy over his steamboat debt to the United States shifted from the federal district court, exercising bankruptcy jurisdiction, to the state probate court in Hancock County, Illinois, where the intestate estate of Joseph Smith was administered. Since Joseph left no will, his property descended to his wife, Emma, and surviving children: Julia M. Smith (adopted), age 13; Joseph Smith III, 12; Frederick G.W. Smith, 8; Alexander Smith, 6; and David Hyrum Smith, a posthumous child born November 18, 1844.<sup>129</sup> Such inheritance was, of course, subject to the prior rights of creditors of the estate.

Three weeks after Joseph's death, his widow, Emma, obtained an appointment as administratrix of his estate. At the same time, she was appointed legal guardian of the minor children named above.<sup>130</sup> About 2 months later, when Emma failed to post the additional bond required by the court, the presiding judge revoked her authority as administratrix. On September 19, 1844, the court appointed in her place Joseph W. Coolidge, a creditor, who then began the process of inventorying the property of the decedent.<sup>131</sup> During the 4 years he served as administrator, Coolidge assembled and sold the personal property of the estate, realizing approximately \$1,000, which he paid out for first- and second-class claims covering funeral expenses and costs of administration.<sup>132</sup> He also received 20 creditors' claims totaling less than \$5,000, including miscellaneous claims of the fourth class in the amount of approximately \$850, and a single claim of the third class in the amount of \$4,033.87, claimed by the heirs of Edward Lawrence.<sup>133</sup> Coolidge was not a vigorous administrator and apparently did nothing after about 1845 either to receive additional creditors' claims or to assemble real estate assets to pay those already received.<sup>134</sup>

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129. See Probate Record of Hancock County, Book "A" at 341 (1840-46), Hancock County Courthouse, Carthage, Ill. [hereinafter cited as Probate Record].

130. *Id.* at 341-42.

131. *Id.* at 354-55, 362; Probate Record "C" at 28, 43 (1844-49).

132. Chancery Records at 490.

133. Probate Record "A" at 412, 421; Claim Record of Hancock County, Book "C" at 242. Apparently, many of the creditors listed in Joseph Smith's 1842 petition for bankruptcy may have erroneously believed that their claims had been discharged in bankruptcy, since none of those debts (except that of the United States) was pressed or allowed as a claim against the estate. Compare schedule, *supra* note 76, with note 138 *infra*.

134. Coolidge did sue William Law, an editor of the *Nauvoo Expositor*, and recovered a default judgment for \$200 and foreclosure of a mortgage on a lot in Nauvoo. Hancock County Circuit Court Record, Book "D" at 258 (May 21, 1845). The Mormons' suppression

Coolidge was replaced on August 8, 1848, by John M. Ferris of Hancock County, who was appointed at the request of Almon W. Babbitt, another creditor. The affidavit asking for the appointment of a successor alleged that Coolidge had left the state and had failed to settle his accounts as required by law.<sup>135</sup> The record in a subsequent equity proceeding suggests that Coolidge may have absconded with some of the property of the estate.<sup>136</sup>

Ferris was a more vigorous administrator than his predecessor. On January 4, 1849, just 5 months after his appointment, he filed a six-page inventory of real property owned by the decedent.<sup>137</sup> Perhaps encouraged by the possible existence of addi-

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of the *Expositor* led to Joseph Smith's arrest and eventual murder. See Oaks, *The Suppression of the Nauvoo Expositor*, 9 UTAH L. REV. 862 (1965). The second largest claim received by Coolidge was \$100 pressed by Charles Ivins, a co-editor of *The Expositor*. *Id.*; note 138 *infra*.

135. Probate Record "E" at 191, 212 (1842-49); Probate Record "C" at 322.

136. Chancery Records at 491-92.

137. Probate Record "E" at 253. This inventory, dated December 26, 1848, comprises part of the Joseph Smith estate papers.

138. Following is the complete list of all claims allowed against the estate of Joseph Smith, as compiled from the list prepared by Administrator Ferris (Claim Record "C" at 242) and from other estate papers in the Hancock County Courthouse, Carthage:

#### COOLIDGE ADMINISTRATION

Claimant	Amount Allowed	Date of Allowance	Class	Claim Description
O. C. Skinner	\$ 30.00	Apr. 14, 1845	4	legal fees
James Huntsman	50.25	Apr. 14, 1845	4	
Newell K. Whitney	8.63	Apr. 14, 1845	4	tax payments
George Bachman	40.00	Apr. 14, 1845	4	legal fees
A. Hamilton	23.00	Apr. 14, 1845	2	boarding
A. Hamilton	3.00	Apr. 14, 1845	4	horses
Powers L. Adams	14.00	Apr. 14, 1845	4	
David Bryant	26.29	Apr. 14, 1845	4	merchandise
Russell & Donaghan	1.60	Apr. 14, 1845	1	
William P. Lyon	10.06	Apr. 14, 1845	1	
J. Dunhovan	15.00	Apr. 14, 1845	4	
John Wilson Williams	14.75	Apr. 14, 1845	4	
*George N. Crouse	10.56	Apr. 14, 1845	4	note
*James Brinkerhoff	11.00	Apr. 14, 1845	4	note
E. Evans & Co.	66.32	Apr. 14, 1845	4	
Charles Ivins	100.00	Apr. 14, 1845	4	
Ruben McBride	9.38	May 6, 1845	4	
**Almon W. Babbitt, guardian for the Heirs of Edward Lawrence	4,033.87	May 6, 1845	3	
J. B. Backenstos	3.63	May 19, 1845	4	
Lorenzo D. Wasson	89.32	May 28, 1845	4	
E. & J. Chase	77.18	July 9, 1845	4	
E. Chase	30.04	July 9, 1845	4	

tional assets for the payment of their claims, at least nine new creditors—most of them claiming large amounts—filed claims during 1848 and 1849. The final total of 37 claims asserted by 31 creditors against the estate of Joseph Smith through April 19, 1849, aggregated \$25,023.45,<sup>138</sup> which amount probably represents claims in addition to the approximately \$1,000 Coolidge had already paid out of the liquid assets of the estate. Almost all of these claims were of the fourth class. Four claimants accounted for claims in excess of \$21,500, or 82 percent of the total: Halstead Haines & Co., Phineas Kimball, Almon W. Babbitt (guardian for the heirs of Lawrence), and the United States of America. The \$9,704 Halstead claim, the largest total, dated back to old obligations of the decedent in Kirtland, Ohio. The United States claim, second in size, was, of course, the judgment entered June 11, 1842, on the suretyship debt for the purchase of the steamboat *Nauvoo*.<sup>139</sup>

J. Chase	57.61	July 9, 1845	4	
J. Chase	107.00	July 9, 1845	4	
Wm. A. Richardson	40.00	Dec. 30, 1845	4	legal fees
Coolidge Subtotal	\$4,872.49			

#### FERRIS ADMINISTRATION

Edward H. Holbrook	875.14	Sept. 16, 1848	4	two notes (Ohio)
Halstead, Haines & Co.	7,349.10	Sept. 16, 1848	4	note (Ohio)
*Leavitt Neal	350.00	Sept. 27, 1848	4	note (Ohio)
Halstead, Haines & Co.	2,354.59	Nov. 16, 1848	4	note (Ohio)
United States of America	5,184.31	Dec. 12, 1848	4	R.E. Lee note
Phineas Kimball	1,377.01	Apr. 3, 1849	4	note
Phineas Kimble	1,464.54	Apr. 3, 1849	4	note
David E. Head	9.37-1/2	Apr. 3, 1849	2	court clerk
Lemuel Andrews	1.37-1/2	Apr. 3, 1849	2	county sheriff
County of Hancock	2.50	Apr. 3, 1849	2	
Hugh Herringshaw	925.00	Apr. 17, 1849	4	account
Amos Davis	258.02	Apr. 19, 1849	4	Oliver Granger note (Ohio)
Ferris Subtotal	\$20,150.96			
Final Total	\$25,023.45			

\*Including interest to date allowed.

\*\*Babbitt brought action against Administrator Coolidge on this claim, but the plaintiff ultimately took a nonsuit, and the court gave the defendant a judgment against Babbitt for costs. Hancock County Circuit Court Record, Book "D" at 356 (Oct. 21, 1845).

The claim listed above from A. Hamilton in the total sum of \$26 included lodgings at the Hamilton House prior to the death of Hyrum and Joseph Smith, expenses of "taking care of the body and boarding persons in attendance of the bodies," and "funeral expenses incurred at Carthage."

139. The United States' claim for \$5,184.31 did not include court costs decreed as part of the June 1842 default judgment, but covered only the amount recorded in the

In the ordinary course of administering an intestate estate that had more debts than liquid assets for payment, an administrator would seek judicial sale of the real estate inherited by the widow and children in order to obtain additional cash to pay the debts of the decedent.<sup>140</sup> In the case of Joseph Smith's estate, there were few liquid resources, many debts, and ample inherited real estate to justify that step. In April 1849, J.M. Ferris sought authority to sell some of the property family members had inherited from Joseph Smith,<sup>141</sup> but before the state probate court ruled on his petition, it was preempted by a suit filed by the United States in the federal circuit court in Springfield. This proceeding in equity (chancery) effectively appropriated all of the assets that might have been used to give at least some small payment to the creditors of the estate, and apparently effectively terminated all pending estate proceedings. Again, the motivating cause was the steamboat debt.

In his last communication on this subject in 1843, the Solicitor of the Treasury had instructed U.S. Attorney Justin Butterfield to pursue the collection of the judgment against Joseph Smith and others by filing a bill in chancery if the proposed compromise was not affected.<sup>142</sup> But nothing was done for a year, and a few months after Joseph Smith was murdered, Justin Butterfield was removed from office with the defeat of John Tyler's Whig administration in the fall of 1844. Little was done to collect the judgment during the 4-year administration of Democrat James Polk.<sup>143</sup> When the Whigs came back into power with Taylor and Fillmore in 1849, the new U.S. Attorney for Illinois, Archibald Williams, wrote the Solicitor of the Treasury to inquire into the status of the matter.<sup>144</sup> The Solicitor reviewed the case with Justin Butterfield, who was then present in Washing-

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Hancock County records. This claim was not allowed until John Ferris presented a certified copy of the judgment to the probate court on December 12, 1848. Probate Record "E" at 250. Two months later, George Edmunds made an appearance on behalf of the United States to withdraw from the court files a certified copy of the judgment. *Id.* at 257.

140. Law of Jan. 23, 1829, § 120, [1833] Rev. Laws Ill. 650; Law of Mar. 3, 1845, ch. 109, § 125, [1845] Rev. Stat. Ill. 562.

141. Chancery Records at 625; notice of intention to petition court, published in Hancock Patriot, Aug. 12, 1848, in Hancock County Courthouse vault.

142. Letter from Charles B. Penrose, Solicitor of the Treasury, to Justin Butterfield, Jan. 11, 1843, in Treasury Papers.

143. U.S. Attorney David L. Gregg did write a letter on September 28, 1846, to the new Treasury Solicitor, Barton, recommending that equity proceedings be instituted and that Justin Butterfield be engaged as a special consultant. By return letter of October 6, Solicitor Barton discouraged Gregg's efforts, advising that neither the size of the claim nor the nature of the grounds justified the employment of additional counsel. Treasury Papers.

144. See Letter from J. C. Clark, Solicitor of the Treasury, to Archibald Williams,

ton. Thereafter, in October 1849, the Solicitor directed Williams to file a bill in equity to collect the judgment, just as Butterfield had proposed years before.<sup>145</sup> This initiated the final and most complicated chapter in an episode that had already covered a decade.

On August 19, 1850, Archibald Williams filed a 20-page complaint in the case of *United States v. Smith*<sup>146</sup> before the United States Circuit Court for the District of Illinois, Judge Nathaniel Pope once again presiding.<sup>147</sup> This was a creditor's bill, invoking the equity powers of the federal court to obtain payment of the United States' judgment against Joseph Smith by selling properties he owned at his death or transferred during his lifetime. This was the final step in the government's efforts to collect the amount due on the note Peter Haws had given, and Joseph Smith had guaranteed, to Robert E. Lee for the purchase of the steamboat *Nauvoo*.

The original defendants were the widow and children of Joseph Smith, as his heirs, John M. Ferris, as the administrator of his estate, and numerous owners of real property acquired from Joseph Smith or his successors—a total of 83 defendants. Initially at issue in this litigation was the ownership of 14 tracts of land in Hancock and Adams Counties (comprising almost 2,000 undeveloped acres) and approximately 260 town lots in or near Nauvoo, allegedly worth a total sum of \$20,000.<sup>148</sup> Less than half of this acreage had been owned by Joseph Smith in his individual capacity or by members of his family on or after the June 1842 judgment. Most of the undeveloped land and substantially all of

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U.S. Attorney for Ill., Jan. 10, 1850, in reply to Williams' letter of Jan. 1, 1850, in Treasury Papers. In June 1841, Williams was one of several lawyers who had successfully resisted an improper Missouri arrest of Joseph Smith and obtained a discharge on habeas corpus from state Circuit Judge Stephen A. Douglas, sitting in Quincy. 4 HISTORY OF THE CHURCH 365-71. His role as one of the defense counsel for the accused assassins of Joseph Smith and his subsequent career are described in D. OAKES & M. HILL, *supra* note 68 at 83-84, 218-19.

145. Letter from R. H. Gillet, Solicitor of the Treasury, to Archibald Williams, U.S. Attorney for Ill., Oct. 24, 1849, in Treasury Papers, which summarizes the Solicitor's interview with Butterfield and concludes as follows: "This presents an opportunity for you to render the government a useful service in a manner to do great credit to yourself. I hope you will be entirely successful in the matter."

146. Chancery Records, *supra* note 36, at 486-506. The Joseph Smith in the title refers to Joseph Smith III, the son of the deceased prophet.

147. This was the same judge who granted the June 1842 default judgment, presided over Joseph Smith's 1842 bankruptcy hearings, and later granted the January 1843 discharge on writ of habeas corpus. See notes 34, 92, 117-18 and accompanying text *supra*.

148. See Chancery Records at 491-501; synopsis of Archibald Williams' letter to the Treasury Solicitor, Jan. 20, 1851, in Register of Miscellaneous Suits, *supra* note 13.

the town lots had been owned at some time by Joseph Smith as trustee-in-trust for the Church. The number of defendants and the detailed inventories of real property evidence the care with which U.S. Attorney Archibald Williams had examined the Hancock County records in preparing the suit.

The theory of the United States' complaint—frequently alleged by way of conclusion—was that numerous land conveyances Joseph Smith made in his individual capacity and as trustee-in-trust were made with intent “to hinder, delay and defraud his creditors.”<sup>149</sup> The complaint asked that these conveyances be set aside as fraudulent and void and that the property be held subject to and sold for payment of the debt to the United States.<sup>150</sup> The theory of a judgment lien against the various properties was not mentioned in the complaint.

On December 4, 1850, the United States filed a supplemental complaint against 22 additional defendants, claiming 15 additional tracts of land (2,300 acres) and 52 town lots in Nauvoo and Ramus (formerly Macedonia and later Webster) that Joseph Smith was said to have purchased for his own use but held as trustee-in-trust until his death for the alleged purpose of evading payment of his debts.<sup>151</sup> This brought the total number of defendants to 105, involving 29 tracts of land (more than 4,000 acres) and 312 town lots. Before the case was concluded, 31 different defendants filed answers, totaling 135 pages in the written record. Another 35 defendants appeared but disclaimed all interest in the properties, and 32 defendants failed to appear.<sup>152</sup> This supplemental complaint also made the claim—for the first time in this controversy—that according to state law Joseph Smith was not entitled to hold more than 10 acres of real estate in trust for the Church.<sup>153</sup>

Shortly after the filing of the original complaint, pursuant to the common practice in equity cases of such complexity, the court appointed a special master, Robert S. Blackwell, to examine the records, inspect the properties, hear other evidence, make recommendations on the questions of fact, and identify questions of law. The first Special Master's report was filed on December 31, 1850.<sup>154</sup>

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149. Chancery Records at 492, 495-96, 499, 505, 620.

150. *Id.* at 504-05.

151. *Id.* at 618-21; Register of Miscellaneous Suits, *supra* note 13.

152. See Chancery Records at 645-47. Among those failing to respond were Lewis C. Bidamon, husband of Joseph Smith's widow, and Almon W. Babbitt. *Id.*

153. *Id.* at 620.

154. *Id.* at 637, 638-48. Special Master Blackwell's lengthy first report dealt with

Judge Pope's first decree was entered January 6, 1851. He found that the complainant United States was entitled to recover \$7,870.23 (including interest and costs) upon its judgment of June 11, 1842. This amount was held recoverable from the estate and properties of Joseph Smith since the other judgment debtors had moved from the jurisdiction or were insolvent.<sup>155</sup> The court's decree also established the legal rules to be followed in determining which properties could be sold to satisfy this debt, and what should happen to any proceeds remaining after the debt was satisfied. The court next appointed Charles B. Lawrence as Commissioner for the purpose of conducting the foreclosure sales and Special Master for submitting reports on the remaining properties.<sup>156</sup> Further reports were filed on July 11, 1851,<sup>157</sup> July 14, 1851,<sup>158</sup> January 13, 1852,<sup>159</sup> and July 17, 1852.<sup>160</sup> Based on these reports, further court decrees were entered on each of the last three dates.<sup>161</sup>

It is significant that, despite the repeated allegations of fraud in the complaints, neither Judge Pope nor any of the masters made any finding of fraud by Joseph Smith, and neither the judge nor the masters relied on that theory to any extent. Instead, the court decrees applied two different legal theories for collection efforts against the properties once owned by Joseph Smith.

The first theory, which related to land Joseph had held in his individual capacity, was a simple one. By well-recognized principles of law, the judgment entered against Joseph Smith on June 11, 1842, became a lien against all land then or thereafter held in his name up until the time the judgment was satisfied and discharged.<sup>162</sup> As a matter of public record, this judgment lien took

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most of the properties that were included in the original complaint, but with none of the properties included in the supplemental complaint.

155. *Id.* at 650-54. The Master found that George Miller, Henry W. Miller, and Peter Haws left Illinois in February 1846, resided in Iowa or Utah thereafter, and were reputedly insolvent from June 11, 1842 until their departure from Illinois. He also found that Hyrum Smith was reputedly insolvent from that date until the time of his death. *Id.* at 639.

156. *Id.* at 653-54.

157. *Id.* at 660-65. This report is exclusively concerned with the extensive trustee properties uncovered by the supplemental complaint.

158. *Id.* at 669-79. Charles B. Lawrence, acting as Commissioner, reported on the sales conducted April 8, 1851, in Nauvoo pursuant to the court order of January 6, 1851, which was based on the first Master's report.

159. *Id.* at 681-86. This report covers sales made November 8, 1851, in Carthage pursuant to the court decree of July 14, 1851, which was based on Lawrence's first report and the supplemental complaint. *Id.* at 666-68.

160. *Id.* at 693-96. This report concerns sales made May 3, 1852, in Quincy pursuant to the court order of January 13, 1852. *Id.* at 686-92.

161. *Id.* at 666-68, 686-92, 696-97.

162. Authorities cited note 35 *supra*.



priority over all claims to the property acquired after June 11, 1842, including the ownership rights of the widow and children of Joseph Smith, who received gratuitous transfers from him during his life or inherited his property as heirs after his death; the rights of his administrator, who sought the property in order to satisfy the claims of unsecured creditors; and even persons who had purchased the property for value after the death of Joseph Smith.<sup>163</sup> Curiously, the complaint had not expressly relied upon this familiar judgment lien theory, which first appeared in Master Blackwell's report and the resulting court decree.<sup>164</sup>

The only claim that would take priority over the judgment lien was the claim of Joseph's widow, Emma. By another well-settled principle of law, expressly recognized in the complaint, a surviving spouse was entitled to a dower interest in all land of which her husband died owning an estate of inheritance ("seized").<sup>165</sup> Since a husband held or took real property subject to his wife's dower interest, that interest ranked ahead of a judg-

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Under the statutes, the judgment lien attached for 7 years. Provision was made, however, for the revival of the lien any time within 20 years after the date of the judgment. Law of Mar. 3, 1845, ch. 66, § 5, [1845] Rev. Stat. Ill. 349; Law of Feb. 10, 1827, § 5, [1833] Rev. Laws Ill. 442.

163. In the exercise of its equity powers, the court permitted certain bona fide purchasers for value who had built substantial improvements on their lands to retain their land, as improved, by paying into court the value of the land as it existed prior to improvements. In this fashion, \$200 was obtained for property conveyed through an intermediary to the wife of Amos Davis, \$2 from the Philadelphia mercantile firm of Wood, Abbott & Co., and \$600 from defendants Thomas Wilson and George Greer. Chancery Records at 688, 694.

164. *Id.* at 643, 651-53. The court specifically held:

That the said deceased [Joseph Smith] at the time of the reneition [sic] of said Judgement and for a long time thereafter was seized in fee of the following real estate upon which said Judgement at the time of the death of the said deceased was a lien . . . .

*Id.* at 652.

165. *Id.* at 502, 521, 653. *Sisk v. Smith*, 6 Ill. (1 Gilm.) 503, 507, 517 (1844); Law of Mar. 3, 1845, ch. 34, § 1, [1845] Rev. Stat. Ill. 198; Law of July 1, 1829, §§ 43, 49, [1833] Rev. Laws. Ill. 625-27.

Emma claimed dower only in lands "of which her said husband died seized" or for which he contracted prior to death and obtained title after his death, and not in other properties owned by her husband during his life. Emma Smith also claimed that conveyances to their adopted daughter Julia were acquired with valuable consideration provided to Joseph Smith by her true father "when said Joseph Smith deceased was solvent and long before the debt upon which the Judgement in said bill mentioned was obtained accrued." Chancery Records at 521-22. The court later permitted Julia to retain her interest in certain conveyances because "by lapse of time the said Judgement has ceased to be a lien upon said premises so far as the said Julia M. is concerned," apparently referring to the equitable doctrine of laches, which prevents a party from prevailing in chancery if his undue delay prejudices the other party. *Id.* at 651-52.

ment lien obtained by his creditors.<sup>166</sup> The value of a dower claim in Illinois at this time was that of a life estate in one-third of the property.<sup>167</sup> For a person of Emma's age, the court valued this as equivalent to an absolute ownership in one-sixth of the property.<sup>168</sup> Emma later filed papers agreeing to relinquish her dower rights in the total property in exchange for a cash payment of one-sixth of the property's value.

Applying the legal rules described above, Judge Pope decreed that all properties owned by Joseph Smith in his personal capacity at the time of his death were covered by the judgment lien and could be sold to satisfy that judgment, provided that one-sixth of the proceeds were paid to the widow, Emma Smith. The decree identified the various lands that could be sold under this theory.<sup>169</sup> The care with which the court heard evidence and examined the various land titles is suggested by the fact that, in response to Emma Smith's contention, a 129-acre tract on the prairie near Nauvoo known as the Smith Family Farm was held free from the judgment lien because the court found that other members of the Church rather than Joseph Smith had paid the purchase price and caused it to be conveyed directly to the Smith children out of "great and tender regard" for Joseph Smith's family.<sup>170</sup>

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166. *Ex parte McElwain*, 29 Ill. 442, 443 (1862); *Blain v. Harrison*, 11 Ill. 384, 388 (1849); *Shaeffer v. Weed*, 8 Ill. (3 Gilm.) 511, 513 (1846); *Sisk v. Smith*, 6 Ill. (1 Gilm.) 503, 508, 518 (1844).

167. Chancery Records at 653; authorities cited note 165 *supra*.

168. Chancery Records at 654-55.

169. *Id.* For example, several large parcels of land aggregating 760 acres that Joseph Smith had owned in his personal capacity at the time of his death but which Administrator Coolidge had conveyed to purchasers for value were held covered by the judgment lien and therefore subject to judicial sale for the benefit of the United States. *Id.* at 651-53, 688. One 40-acre tract had been conveyed to Coolidge's wife for \$50; five tracts totaling 560 acres had been conveyed to William Clayton for \$412.50 (later transferred to the successor trustees for the Church); and a quarter section had been conveyed to Almon W. Babbitt and William Kay (subsequently improved and sold to Amos Davis and a Philadelphia mercantile firm, Wood, Abbot & Co.). *Id.* at 491-92; note 163 *supra*. Three other tracts of land aggregating 240 acres that Joseph Smith had conveyed to his four children during his lifetime were likewise held covered by the lien and subjected to judicial sale along with several valuable improvements thereon. *Id.* at 689-91. As to all children except Julia, the conveyance was found to have been made solely for "love and affection" instead of a valuable consideration.

170. See Emma's allegations, *id.* at 516-17. But see 5 HISTORY OF THE CHURCH 184. The land was not subjected to execution. Similarly, the court did not proceed against the so-called Cleveland Farm (approximately 200 acres) near Quincy, Adams County, which the subsequent purchaser from Emma, Joshua Ward, alleged had been acquired with her own separate property and had reverted to her upon Joseph's death, notwithstanding her allegedly invalid conveyance to Joseph Smith as trustee. *Id.* at 501, 629-35. In addition, see the August 20, 1844 opinion of attorney James A. Ralston advising Emma Smith to

The land Joseph Smith had held as trustee-in-trust for the Church was also covered by the judgment lien, but here the court apparently relied on a second theory, the basis of which had also been introduced for the first time in the supplemental complaint. Land held in trust normally would not be covered by a judgment lien arising out of the personal debts of the trustee. Of course, if a person had conveyed his personal property to himself as trustee in order to defraud his personal creditors, as John C. Bennett and Justin Butterfield claimed Joseph Smith had done, then a court of equity could decree a sale of trust properties to satisfy those personal creditors. This was the legal theory on which the U.S. Attorney had filed his original complaint, but it was not the ground upon which the court based its decree.

Neither the Special Master nor the court made any finding of fraud in this case. In fact, the claim of fraud was groundless. As described more fully above, Joseph Smith's efforts to separate his personal property from the assets he held as trustee for the Church had begun in February 1841 and were pursued with renewed vigor in connection with the urgings of the Quorum of the Twelve and the actions of the Church conference in October 1841.<sup>171</sup> This last date was over 8 months before entry of the steamboat judgment and over 6 months before Joseph Smith's decision to seek discharge under the Bankruptcy Act.

The court's decree that made the trustee lands subject to a judgment lien stemming from a personal debt of the trustee was based on a legal ruling that disadvantaged all record owners of property Joseph Smith had held as trustee-in-trust for the Church at the time of his death. The Illinois statute the Church had relied on in designating Joseph Smith as trustee-in-trust for the Church made it lawful for the trustee of any religious society "to receive by gift, devise or purchase, a quantity of land not exceeding 10 acres . . . ."<sup>172</sup> There is no evidence that Joseph Smith or other Church leaders were ever aware of this 10-acre limitation on Church ownership of land. On the contrary, entries in the *History of the Church* show continued, conscientious efforts, probably in reliance on the advice of counsel, to separate

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the same effect. Item 4-N-a-11, Wood Collection. The court's action effectively repudiated the earlier position of U.S. Attorney Justin Butterfield, who had told the Solicitor of the Treasury that the Cleveland Farm transaction was a "clear case" of fraud, apparently on the theory that Joseph had supplied the consideration for the purchase but had caused title to be taken in his wife's name and thereafter had it transferred to himself as trustee-in-trust. See note 148 *supra*; Chancery Records at 501, 630.

171. See notes 51-60 and accompanying text *supra*.

172. Law of Mar. 3, 1845, ch. 25, § 44, [1845] Rev. Stat. Ill. 120.

from Joseph's personal properties the properties he held for the Church, all with the effect of increasing the lands owned by the Church.<sup>173</sup>

After examining witnesses and land records, Master Lawrence found that although Joseph Smith was duly elected to the office of trustee-in-trust for the Church prior to his receipt of deeds to the properties at issue in this case, Joseph Smith as trustee had received earlier deeds for "more than ten acres of land situated in said Hancock County . . . ." <sup>174</sup> In a decision that is typical of traditional judicial hostility toward lands held in trust for any religious group, <sup>175</sup> Judge Pope confirmed the Special Master's findings of fact and decreed that all properties involved in this suit that had been held by Joseph Smith as trustee for the Church prior to or at the time of his death (all of which were in excess of the 10-acre limitation) were deemed by the law to be held in his personal capacity and therefore covered by the 1842 judgment lien. <sup>176</sup> As a result, the judgment lien was held to cover trust property that Joseph had conveyed to Emma and the children during his lifetime pursuant to the Church resolution. <sup>177</sup> The judgment lien also covered properties Joseph had held as trustee-in-trust for the Church at the time of his death, which the successor trustees later sold as the Church liquidated its land holdings in connection with the move West. <sup>178</sup> For reasons not clear to the

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173. See text accompanying notes 42-60 *supra*.

174. Chancery Records at 665.

175. Similarly, in an 1882 case involving an 80-acre conveyance to a Roman Catholic congregation, the Supreme Court of Illinois gave the following construction to a related statute imposing a 10-acre maximum on property that could be acquired by a religious corporation: "Any amount in excess of that [10 acres] is expressly forbidden by the statute, and it follows that all conveyances, deeds or other contracts made in violation of this prohibition, are absolutely void." *St. Peter's Roman Catholic Congregation v. Germain*, 104 Ill. 440, 446 (1882).

176. Chancery Records at 666-68.

177. *Id.* at 641-43, 652-53, 670-73. Included in a July 12, 1843 conveyance to Joseph's wife and children were 48 Nauvoo lots contained in 18 scattered blocks, starting with block 93 and ending with block 137. All except lot 3, block 93 and lot 4, block 94 (excluding a one-fifth interest retained by adopted daughter Julia) were auctioned off to various purchasers by Special Master Lawrence in Nauvoo on April 8, 1851.

178. *Id.* at 651-52, 664-65, 666-68, 688-89. For example, approximately 60 lots in Nauvoo (scattered between blocks 100 and 153), approximately 46 town lots in Ramus (Macedonia or Webster) and 14 prairie tracts (approximately 2300 acres) had been held or conveyed by the Church's successor trustees. A quarter section near Nauvoo that Thomas Wilson and George Greer had purchased from the Church trustees and subsequently improved was ordered subject to judicial sale, *id.* at 688-89, as were large tracts of land trustees Whitney and Miller had conveyed as described in note 189 *infra*, and numerous lots and parcels trustees Babbitt, Heywood, and Fullmer had sold to various purchasers. *Id.* at 664-65, 666-68.

authors, the United States abandoned its claim to several parcels Joseph Smith had conveyed to bona fide purchasers for value during his lifetime.<sup>179</sup>

As a corollary of the court's ruling that Joseph Smith owned all trustee-in-trust (Church) properties in excess of 10 acres in his personal capacity, it followed that Emma Smith owned a one-sixth dower interest in all such properties. The court so decreed.<sup>180</sup> As a result, persons who had purchased from the successor trustees what they thought were Church properties would now have those properties sold at a judicial sale, with one-sixth of the proceeds being paid to Emma Smith. This result must have been embarrassing to the Church and an unexpected windfall for Emma Smith, then Mrs. Lewis C. Bidamon.

Pursuant to court order, Special Master Lawrence held three foreclosure sales on the land the court had held covered by the judgment lien.<sup>181</sup> The first sale, which involved 98 Nauvoo lots Joseph Smith had held as trustee and 6 nearby tracts he owned personally, was held "at the front door of the public house, known as the Nauvoo house" on April 8, 1851, and grossed \$2,710.30.<sup>182</sup> The second sale, which involved 14 tracts (approximately 2,300 acres) and 51 town lots (5 in Nauvoo and 46 in Ramus or Macedonia) that Joseph Smith held as trustee at the time of his death, was conducted at the Hancock County Courthouse in Carthage on November 8, 1851. This sale grossed \$7,277.75, most of which consisted of non-cash amounts bid in by an agent for the United States in its capacity as judgment creditor.<sup>183</sup> The third sale was held at the Adams County Courthouse in Quincy, Illinois on May 3, 1852, and grossed \$1,160.35.<sup>184</sup>

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Newell K. Whitney and George Miller were named successor trustees for the Church shortly after the death of Joseph Smith. *Id.* at 662. In 1846 they were replaced by Almon W. Babbitt, Joseph L. Heywood, and John S. Fullmer. *Id.*

179. *Id.* at 620-21.

180. *Id.* at 668, 689.

181. *Id.* at 653, 668, 690-91.

182. *Id.* at 669-74. The tracts held in his individual capacity sold for a total of \$90.50; the balance of the proceeds was attributable to the sale of trustee properties. The United States bid on several parcels and received a credit of \$1,393.05 against its debt. Actual cash proceeds amounted to \$1,317.25. *Id.* at 673-74.

183. *Id.* at 681-86. All of these properties had been included in the Government's supplemental complaint. *Id.* at 619-20.

184. *Id.* at 693-96. All of these properties contained valuable improvements. The property included 4 tracts owned by Joseph in his personal capacity (accounting for sale proceeds of \$510.35, all paid by George Edmunds), a 1-acre parcel as part of a larger tract conveyed by Joseph as trustee to his wife (who paid \$50 at the auction), and a quarter section owned at death by Smith as trustee (repurchased by owners Wilson and Greer for \$600. See note 178 *supra*).

So it was that when the case was finally concluded on July 17, 1852, the court's various decrees of distribution confirmed the following division of the total proceeds of sale:<sup>185</sup>

Payment of the judgment of the United States, with interest	\$ 7,870.23
Payment to Emma Smith Bidamon for dower rights	\$ 1,809.41 <sup>186</sup>
The remainder, apparently for costs and expenses	\$ 1,468.71
Total Proceeds of Sale	\$11,148.35

Nearly all of these proceeds (95 percent) were attributable to the sale of properties Joseph Smith had held as trustee-in-trust for the Church.

The parties who benefited most from the equity proceeding were the lawyers, who received their fees, Emma Smith Bidamon,<sup>187</sup> who obtained her dower interest, and the United States, which obtained payment in full of principal and interest on its 1842 steamboat judgment. The decedent's assets being exhausted, the other creditors who had filed claims against the Joseph Smith estate received no payment of their claims.<sup>188</sup>

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185. *Id.* at 650-54, 666-68, 686-92, 696-97.

186. In addition to these cash proceeds, which the Special Master distributed to Emma after each of the various sales, the circuit court held that a further sum of \$197.35 remained due to her, certifying this fact "to the proper Department at Washington for payment." *Id.* at 696-97. It appears that Emma pursued the right to such payment through political channels until 1856, when an act of Congress finally granted her that amount. See H.R. REP. NO. 66, 34th Cong., 1st Sess. 1-3 (1856); An Act for the Relief of Emma Bidamon, ch. 39, 11 Stat. 450 (1856); CONG. GLOBE, 34th Cong., 1st Sess. 1438 (1856). In addition, see Letter from the Secretary of the Treasury to Richardson, Jan. 30, 1854, referring to Richardson's memorandum of January 5, 1854 and a Report from the Solicitor of the Treasury, Jan. 27, 1854, Items 4-N-b-72, 4-N-e-7 & 4-N-f-9, in Wood Collection.

187. It appears that Emma Smith Bidamon reinvested some of her proceeds in certain of the Smith properties that were sold at the public auctions, perhaps in an effort to preserve the equivalent of some of her late husband's lifetime transfers to their children that had been upset by the court. See Chancery Records at 670, 689. When Emma Smith filed her final account as guardian of the minor children in 1867, she listed 47 city lots and 6 tracts of land that she and the children then held as tenants in common, and 8 other lots that she had sold under order of the court for a total of \$1,060, presumably to pay debts related to the guardianship. Final Account of Emma Smith filed May 3, 1867, from Hancock County Courthouse, Carthage, Ill. Twenty of these lots and one of the tracts listed in this inventory were purchased by Emma or Lewis Bidamon at the public auctions held in April 1851 and May 1852. Chancery Records at 669-73, 693-96.

188. Creditor Phineas Kimball was the exception. After obtaining a state-court judgment against the estate in March 1852 for about \$5,000, he obtained proceeds of about \$3,000 by having several properties Joseph held in his personal capacity sold under judicial

Who suffered the loss—from whom was the land taken that was sold in this manner? The record suggests that the biggest single loser was the estate of General James Adams, a Mormon convert to whom the successor trustees had reconveyed 1,760 acres of Hancock County land that Adams had originally conveyed to Joseph Smith as trustee in payment for Adams' 50 percent interest in the newly purchased steamboat, the *Maid of Iowa*. The land was reconveyed after the deaths of Smith and Adams, apparently because the transaction was rescinded by mutual consent.<sup>189</sup> Owned at the time of the chancery sale by the Adams estate or its successors, this acreage was the principal land named in the Government's supplemental complaint. It was sold for \$4,800, thus representing 43 percent of the total proceeds.<sup>190</sup>

Most of the other big losers were land speculators. After Joseph Smith's death, his successors, as trustees for the Church, made preparation for the Mormons' departure from Illinois by selling numerous tracts of Church properties to Samuel Bechtold of Philadelphia, George H. Todd of Evansville, Indiana, and C.E. Yates of Nauvoo.<sup>191</sup> Many of the tracts involved in the judgment sales were owned by these parties or their successors. As far as can

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process on June 5, 1852: the Joseph Smith Family Farm, the Mansion House, the Nauvoo House, the Joseph Smith store and Homestead, and the "Church Farm" (so called because purchased from Francis Church). Deed of M.M. Morrill, Special Commissioner, to George Edmunds, Jr., Hancock County Deeds, Book 34, p. 217, Carthage, Ill., recorded on microfilm in the Genealogical Society Library, Salt Lake City. The Church Farm had been among the properties sold pursuant to the federal equity court order a month earlier. See note 169 *supra*. The federal judge had specifically exempted some of the above properties from such sale. Text accompanying note 170 *supra*. The purchaser in both judicial sales of the Church Farm (perhaps acting for Emma or the Smith children) was lawyer George Edmunds, Jr., who paid \$225 in the federal sale and \$700 in the state one. Deed of M.M. Morrill, *supra*; summaries of Nauvoo deed records at Nauvoo Restoration, Inc. The authors are indebted to Rowena J. Miller for her invaluable research assistance and insights on these land records.

189. Joseph Smith and James Adams each purchased a 50 per cent interest in the *Maid of Iowa* in May and June 1843, Adams deeding Joseph 1,760 acres of prairie land (11 quarter sections) at \$2 per acre in payment for his share. See 5 HISTORY OF THE CHURCH 380, 386, 406, 413, 417-18; Nauvoo Trustee's Land Book "B," at 19, Church Archives. The steamer was employed as a ferryboat between Nauvoo and Montrose, Iowa. *Id.* at 380, 386. Adams died in August 1843. Nauvoo Neighbor, Aug. 16, 1843, at 3, col. 6; 5 HISTORY OF THE CHURCH 537. On November 28, 1844, the Church trustees who succeeded Joseph Smith reconveyed to Adams' executor the entire 1,760 acres in an apparent rescission of the original arrangement or repurchase of Adams' 50 percent ownership in the steamboat. Hancock County deed records, Book "N," at 453. On April 9, 1845, Brigham Young directed that the *Maid of Iowa* be sold for the best available price. 7 HISTORY OF THE CHURCH 395.

190. Chancery Records at 682.

191. Information supplied by Rowena J. Miller, verified in Hancock County deed records.

be determined from the records, the Church owned no more than a token amount of this property at the time of the judicial sales in 1851-52, the successor trustees having disposed of most saleable Church properties soon after the move West in 1845-46. The group that sustained the smallest loss consisted of small landowners who had purchased properties from the Church's trustees for their own use. Typically, they preserved their ownership by purchasing their own land at the judgment sale for a relatively nominal amount.<sup>192</sup>

### CONCLUSION

The wake of the Steamboat *Nauvoo* capsized or threatened financial transactions and property ownerships in Hancock County for more than a decade. What began as a straightforward business transaction with Joseph Smith guaranteeing a promissory note that several Mormon businessmen gave for the purchase of a Government surplus steamboat ultimately produced a succession of lawsuits, forestalled Joseph Smith's attempt to obtain discharge in bankruptcy, and upset conscientious attempts to separate the Church properties from properties personally held by Joseph Smith. Although plagued by misfortune in business and bad advice about the law, Joseph Smith was nevertheless untainted by the wrongful conduct with which his enemies charged him. John C. Bennett's extravagant and unsupported charges of fraud, published in the anti-Mormon press, found their way into official allegations in judicial proceedings. These allegations, which pointed to a prolonged series of property transactions conducted by Joseph Smith over many years, were examined in meticulous detail by special masters and a federal judge in an 1852 Illinois equity proceeding. Neither this suit in equity nor any other proceeding described here resulted in any finding of improper conduct by Joseph Smith. Relying on a law fixing a 10-acre

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192. *Id.* For example, Noah Butler, who had purchased a Nauvoo lot in 1846 for \$500, purchased the same lot from the United States for \$100, the same price for which the Government had purchased it at the judgment sale. Henry Swank, who had purchased a Nauvoo lot for \$300 in 1846, bought the same lot at the judgment sale for \$20.05. Mary Eagan secured her ownership in parts of three different lots purchased from the trustees and others for a total of \$210, by buying the same at the judgment sale for 75 cents. Mary Wallworth did the same for a \$100 lot for \$10, and Elisabeth Bixler for a lot costing \$350 for \$60. These illustrations suggest both the relatively nominal nature of the loss to homeowners or small property owners and the relatively small proportion of the sale proceeds obtained by this means. Amos Davis paid \$200, and the Philadelphia mercantile firm of Wood, Abbott & Co. paid \$2 to retain land on which they had constructed valuable improvements. See notes 163, 169 *supra*.



legal maximum on property that could be held in trust for a church, the federal judge decreed in 1852 that all of the properties Joseph Smith had held as trustee-in-trust for the Church at the time of his death was subject to judicial sale to satisfy the 1842 steamboat judgment obtained against Joseph Smith personally as the guarantor of another man's obligation. That decree, which upset the ownership of scores of lots and parcels of land purchased from the Church in Hancock County, probably stands as the final indignity the Mormons suffered at the hands of their fellow citizens and government officials in Illinois.